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Reprints of

LITTELL'S POLITICAL TRANSACTIONS

In and Concerning Kentucky

and

LETTER OF GEORGE NICHOLAS

To his friend in Virginia

also

GENERAL WILKINSON'S MEMORIAL

With an Introduction

BY TEMPLE BODLEY

JOHN P. MORTON & COMPANY
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INTRODUCTION

By Temple Bodley

This volume is a reprint of two exceedingly rare and historically valuable little publications of over a century ago—Littell's *Political Transactions In and Concerning Kentucky* and the *Letter from George Nicholas*. Both concern a personal and political conflict between two Kentucky factions after the Revolution. This was the so-called "Spanish Conspiracy Controversy" which grew out of Spain's denial of our right to the free navigation of the Mississippi River through Louisiana, the neglect of the Kentucky people by Virginia and the Continental Congress, and their demand for separation from that state and the erection of a new state of their own.

Littell's book was published in 1806, eight years after the Nicholas Letter, but is given first place in this reprint because it mainly relates to transactions earlier than those discussed by Nicholas, and also gives a better idea of the origin and nature of the controversy.

The *Political Transactions* was written by William Littell at the instance of four eminent Kentuckians, namely, Harry Innes, who was attorney-general and the first federal judge of Kentucky, John Brown, its first representative in the Continental Congress and first United States Senator, Caleb Wallace, judge of the Kentucky Supreme Court, and Thomas Todd, who became a Justice of the Supreme Court of the United States. All of these men, as well as Colonel Nicholas, were personal and political friends of Madison, Jefferson, and other eastern leaders of national eminence.

Littell was a capable young lawyer who became well known as author of *Littell's Reports* of the decisions of the Kentucky Court of Appeals and of *Littell's Laws of Kentucky*. He was a friend of Innes, Wallace, Todd, and Brown, and shared their Jeffersonian Republican political faith.

Colonel George Nicholas, the writer of the reprinted letter, before removing to Kentucky was one of Virginia's honored men, best known for his earnest and able advocacy of the adoption of the Federal Constitution. During the famous debate in the Virginia Convention of 1788, he shared leadership in championing the new government

with Edmund Pendleton, James Madison, Edmund Randolph, John Marshall and Henry Lee, while their opponents were such men as Patrick Henry, Richard Bland, James Monroe, George Mason and Benjamin Harrison. Madison, himself a master-debater, declared Mason the greatest man in debate he ever knew; Patrick Henry's eloquence and skill in the art all know. It was indeed a battle of intellectual giants, and Nicholas was easily one of the strongest.

Two other members of the Convention who earnestly and ably advocated adoption of the Constitution were Judge Innes' brother, Colonel James Innes, the Attorney-General of Virginia, and George Nicholas' brother, Wilson Cary Nicholas, who commanded Washington's Life Guards during the Revolutionary War, and was afterwards United States Senator and Governor of Virginia.[1]

The Spanish conspiracy controversy in Kentucky grew out of a series of violent defamatory newspaper articles and pamphlets charging that Innes, Nicholas, Brown, Wallace, and other Kentucky leaders were conspiring with one another and the Spanish governors of Louisiana to detach Kentucky from the Union. The charge was made by their rancorous political and personal enemy, Humphrey Marshall, who afterwards elaborated it in his *History of Kentucky.*

Two considerations warrant the Filson Club in reprinting the *Political Transactions* and the *Nicholas Letter.* Few people at this time will care much about the merely personal aspects of a bitter polemical controversy carried on over a hundred years ago; but the Spanish Conspiracy controversy became far more than personal, nor was its influence limited to Kentucky. These reprinted works throw valuable light upon the momentous dispute between the United

[1] The Nicholas brothers were men of distinguished and patriotic ancestry. Their father, Robert Carter Nicholas, was president of Virginia's famous revolutionary convention of 1775, judge of her High Court of Chancery, and later of the Court of Appeals. William Wirt Henry describes him as "of singular purity of character and strength of intellect—the leading lawyer of the colony." (*Life of Patrick Henry*, 73.) Colonel George Nicholas' son, Samuel Smith Nicholas, was long a distinguished jurist in Kentucky, Chancellor of the Louisville Chancery Court, and judge of the Kentucky Court of Appeals. His *Conservative and Political Essays*, written just before and early during the Civil War, disclose great ability and patriotism, and exercised great influence in preventing Kentucky's secession.

Brown's father was a prominent Virginia clergyman, his mother a daughter of Colonel William Preston. When a student at Princeton, John Brown joined Washington's army as a private while it was in retreat through New Jersey. Later he was a student at William and Mary College, then studied law, and in 1782 removed to Frankfort, Kentucky.

States and Spain over our claim to the free navigation of the lower Mississippi, which gave rise to angry dissensions between the northern and southern states, and between the people living on the "western waters" and those living east of the Alleghenies. These dissensions nearly wrecked the Confederation; they nearly defeated the adoption of the Federal Constitution; they nearly split the United States in two, with the Alleghenies as the dividing line.

Another consideration calls for this reprint. Although Marshall's side of the controversy about the alleged Spanish Conspiracy was adroitly and fully presented and perpetuated in his *History of Kentucky*, the case for his opponents appeared only partially and in ephemeral publications, which have long been out of print and are now inaccessible save to a very few. That their side of the controversy may be more fully presented and better understood, it is the avowed purpose of this introduction—so far as limited space permits—to supplement the reprinted arguments of Littell and Nicholas with what seem important facts and considerations which they do not mention. Littell's little work was written during the excitement of an active and bitter controversy which filled the rival newspapers of the day and aroused intensest public interest. It was hurriedly prepared for the press to counteract Marshall's defamatory articles; and, being addressed to a public already more or less familiar with the subjects discussed, naturally omitted much that the present-day reader knows nothing about. The Nicholas letter was a hot vindication of his course against Marshall's charges. It was written to a Federalist friend, Colonel Thruston, and it, too, was intended to be read by people already familiar with facts which the readers of this introduction cannot be presumed to know. Marshall no doubt believed there was a real Spanish Conspiracy, and perhaps thought he was prompted by patriotic motives as well as personal enmity in making his charges; but it must be said the methods he used to support them were most misleading and unfair.

The statements and arguments in the *Political Transactions* and *Nicholas Letter* can hardly be understood without some knowledge of the general political and other conditions prevailing when the conspiracy controversy arose; and an attempt will now be made to explain those conditions very briefly.

During the Revolutionary War the amazing success of George Rogers Clark and his little Virginian army in driving the British from

their posts in the Mississippi Valley north of the Ohio and overawing thousands of hostile Indians there, seemed to promise peace and safety to western settlers; and the next year a great wave of immigration from the east flowed into the trans-Allegheny wilderness. Whereas, before Clark's victory at Vincennes in 1779 there were only one hundred and two men able to bear arms in Kentucky, the next year its population was said to have grown to twenty thousand, and Robertson pushed a small settlement westward into central Tennessee at Nashville. Peace, however, did not come; the Kentucky people had still to endure more years of desperate struggle, not only with their British and Indian enemies, but with dire poverty and famine. To make their plight worse, they were torn with dissensions, industriously fomented by the emissaries of a powerful syndicate of northern land jobbers, called the Indiana and Vandalia Companies, who pretended to have title to West Virginia and a large part of Kentucky under fraudulently procured deeds from the Six Nation Indians of New York. These men wielded a very great and sinister influence in the Continental Congress, which, during the later years of the Revolution, had lost much of its former high character.

Most of the immigrants to Kentucky were poor; and many of them from other states, especially Pennsylvania, finding the best lands nearly all taken up under grants from Virginia, soon developed an ugly spirit of agrarianism and not only disputed her land grants, but conspired with the land company emissaries to overthrow her government in Kentucky and erect a new state under authority from Congress. Under the influence of the land companies, and by the votes of delegates from northern states, Congress virtually asserted a fictitious claim to the whole trans-Allegheny region. By 1781 it forced an offer from Virginia to cede to the Confederacy the whole country north of the Ohio, all of which was within her charter bounds. By this offer Virginia hoped to satisfy the northern states and to be left in undisputed possession of what are now West Virginia and Kentucky; but that region being precisely the one claimed by the land jobbers, they continued to influence Congress to dispute her jurisdiction west of the Alleghenies and instigated many of her Kentucky citizens to do likewise. Not until after the Revolution did Congress, in 1784, accept Virginia's cession of the Northwest Territory.

Meantime, that state, fearing she would be forced to give up Kentucky also, and being greatly impoverished, naturally lost in-

terest in governing and protecting the people there. Furthermore, Congress, after receiving the cession of the Northwest Territory, did practically nothing to restrain its Indian subjects there from invading Kentucky, and numberless bands of warriors overran the district, slaughtering the people and burning their homes. Nor was this all. As if to make the plight of the Kentuckians intolerable, the Virginia government forbade them to defend themselves by crossing the Ohio and striking the savages at their home towns, where they were alone vulnerable.

Having repeatedly, but in vain, begged Virginia to protect them, or to influence Congress to do so, the Kentucky people began to demand separation from that state and statehood for Kentucky, so that they might protect themselves. Aside from Virginia's neglect or inability to defend them, they had other reasons for desiring separation. One was their remoteness from the state capital, which made communication with the state government slow, uncertain, and expensive. In times of great public danger the delays were sometimes disastrous, and at all times exasperating. One might travel hundreds of miles through a difficult and dangerous mountain wilderness to look into a land title at Richmond, or to attend the trial of a suit, or to settle an account, or to collect a claim against the state, and perhaps be delayed there for months at ruinous expense before he could return to home and family. Many were the lawful land titles lost by pioneer soldiers and others unable to look after them at the capital.

Still another motive impelling the Kentucky people to seek self-government with direction of their own affairs, grew out of Spain's refusal to allow them to use the lower Mississippi, where she owned both banks of the river. She was ever fearful that a growing American power west of the Alleghenies would wrest Louisiana from her. Throughout the Revolution, with the powerful, secret, and treacherous aid of our ally, France, Spain schemed to persuade or force the Continental Congress to surrender to her the great region between the Alleghenies and the Mississippi, at least as far north as the Ohio. Failing in that, she afterward stoutly asserted her exclusive ownership of the lower part of the river, forbade the Americans to use it, arrested those who attempted to do so, and confiscated their boats and cargoes.

Naturally, the Kentuckians were incensed; for, although their virgin soil yielded superabundant products, the cost of transporting them over the mountains to Atlantic seaports was greater than they

would sell for there. Sorely chafing to find themselves cut off from using the great river whose tributaries passed their very doors, and to see their surplus products rotting on their hands, they hotly demanded that Congress should force Spain to open it. Mr. Jay, the Secretary for Foreign Affairs, had always declared they had a clear treaty right to navigate it freely, and said: "God Almighty had made that river as a highway for their use"; yet Congress did practically nothing to secure their right.

Such were the many causes of complaint leading the Kentucky people to seek separation from Virginia. In view of alarming reports of impending Indian invasion, an informal meeting of citizens at Danville, in November, 1784, recommended the election of delegates from the militia companies to a convention to be held there the next month to concert measures of defense. The delegates assembled, but, finding that no effective defense was practicable under the state laws, they unanimously passed resolutions recommending Kentucky's separation from Virginia, and that a popular convention be called to meet in May, 1785, to petition the State Assembly for an act of separation. The resolution further declared that, when made independent, Kentucky "ought to be taken into Union with the United States." Thus was initiated the movement for statehood.[2]

In the May convention there was some discussion as to the wisdom of seeking a separation, and as to the proper proceedings to secure it, but no controversy. Such a controversy did indeed arise afterwards, but not, it should be understood, until over three years later, in 1788. The May, 1785, convention—the first popular one[3]—unanimously passed resolutions calling for Kentucky's separation from Virginia and admission into the confederation. It likewise ordered a petition to be prepared and sent to the Assembly praying for the state's consent, and also an address to the Kentucky people. (All appear on pages 62-65.) The convention, however, "determined not to proceed in a matter of such magnitude without a repeated ap-

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[2] Ebenezer Brooks, who was a tutor of Colonel Thomas Marshall's children, made a motion for immediate separation, but got no support. (*Draper MSS.*, 11 J 37.) Muter to Madison, February 20, 1787, refers to the motion. (Library of Congress, *Madison Papers*, XIV, 116.)

[3] The December, 1784, meeting of militia officers is usually referred to as the first popular convention called to consider separation, but it was not called for that purpose, and it was not a people's convention.

peal" to the people, and recommended the election of another convention, to meet at Danville on the second Monday in August following. Evidently with the design to prepare his readers to believe there was an early hatching of the alleged "Spanish Conspiracy," Marshall labors to make it appear that the men he charges with complicity were scheming for a revolutionary separation from Virginia and an alliance with Spain even so early as during this convention of May, 1785. This he does by insinuation rather than frank assertion.[4]

In this second popular convention of August, 1785, were several members who were afterwards to figure in the Spanish Conspiracy controversy. The president of the convention was Colonel Samuel McDowell, a Judge of Kentucky's Supreme Court and a man of such universally recognized integrity, fairness, and judgment that, despite the acrimonious dissensions which soon prevailed, he was unanimously chosen to preside over all the eight conventions seeking separation from Virginia. He is now mainly known, however, as the father of Doctor Ephraim McDowell, "the father of ovariotomy," whose pioneer work in that field of surgery has led to the saving of the lives of countless thousands of women and made his name familiar to surgeons throughout the world.[5] Another member of this second convention was Judge George Muter of the Supreme Court for Kentucky, a near neighbor and the intimate personal and political friend of Colonel Thomas Marshall, Humphrey Marshall's father-in-law. Other members were Innes, Edwards, Wallace, and Sebastian, all of whom will presently receive attention. Another was General James Wilkinson, who came to Kentucky the year before with the tide of immigration following the war, and who, more than any other man, was to influence the course of western events for many years afterwards. Small, handsome, of open countenance, pleasing voice and

[4] Marshall's *Kentucky*, I, 205, etc. He gives his readers to understand that there was not only "discussion" about separation, but "some excitement," although he says himself that the proceedings and resolutions were agreed upon without dissent. With much shrewd verbiage, he suggests that the address to the people, which the convention unanimously ordered, was calculated to "inflame impatience among the people" and "infuse * * * disaffection * * * towards the government of Virginia," and plainly intimates that it was the work of designing "revolutionists." For this covert charge he offers no more than his own vague statement. The address to the people (see page 63) was evidently intended to present strongly the necessity for separation. In accord with the style of composition then usual, it is grandiloquent, but it evidences no such revolutionary design.

[5] See Dr. Augustus Schachner's excellent *Life of Ephraim McDowell.*

charming manners, he was the most designing, plausible, treacherous and amazingly successful scoundrel in American history. Entering, when hardly more than a boy, the Revolutionary Army under Washington, during the siege of Boston, he courted and rapidly won favor with the great in society, in the army, and in Congress, and in the course of time became, and for many years remained, commander-in-chief of the American armies. During a long, strenuous, and eventful life, he cultivated with remarkable assiduity and adroitness the friendship of all who could serve his secret purposes, and succeeded in winning and holding the confidence of superiors whom he was ever plotting to undermine, and the loyal affection of confiding friends whom he was ever ready to ruin in order to effect his selfish ends.

While with the army before Boston, Wilkinson attached himself to Colonel Benedict Arnold, and was his companion in his famous march against Quebec. Later, when a rivalry arose between Arnold and General Gates, Wilkinson deserted his chief and became Gates' aid and confidante—Trevelyian calls him "Gates' Jackal."[7] During Burgoyne's British invasion of New York in 1777, ending in his surrender to Gates at Saratoga, Wilkinson is said to have displayed his talent for deceit by taking credit to himself for an important discovery of the enemy's position, made in the night by another American officer, Colonel Hardin. Hardin confided the discovery to Wilkinson, who unblushingly reported it as his own. Upon Burgoyne's surrender, Gates (who was much more scheming politician than soldier) sent news of the great victory to Congress by Wilkinson,[8] who was invited to address it, won its favor, and was appointed brigadier-general in preference to the two real heroes of Saratoga, Colonels Daniel Morgan and Benedict Arnold. Gates was made President of the Board of War, with great powers, and had his charming young aide given the important position of secretary of the board. Then followed the "Conway Cabal"—the secret conspiracy of Gates and his political friends, in Congress and in the army, to overthrow Washington and make Gates commander-in-chief. All through the history of the Cabal are found signs indicating that the ever-active, shrewd, and devious Wilkinson was really its master spirit.

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[7] *American Revolution*, III, 154.

[8] *Journal of Congress* (old), III, 469, gives his report; Bancroft's *United States*, V, 191.

After a time, however, seeing that Washington was not to be overthrown, Wilkinson betrayed Gates' scheme to Lord Sterling, who promptly communicated it to Washington's aide, Alexander Hamilton. When Gates learned of this, he proposed challenging Wilkinson, who seemed to have no escape from a duel with Gates, unless he denied Lord Sterling's report, and, in that case, a duel with Sterling. But Wilkinson avoided fighting either by claiming that what he had said about Gates was only said "in a convivial hour"—in other words, while he was drunk. The excuse answered his purpose, and there was no duel; but, knowing the cunning methods of the man, we may be pretty sure that his treachery was carefully pre-arranged and his intoxication pretended rather than real. His fellow officers suspected him, and forty-nine other brigadier-generals demanded that Congress rescind his commission as general; whereupon he resigned it.

Later, when Arnold was clothier-general of the American forces, it was his quondam friend, Wilkinson, who secretly made charges of corruption against him to President Reed of Pennsylvania, and aided the latter to drive the brilliant, brave, but ill-governed Arnold into his well known treason. Soon afterward Wilkinson became clothier-general, and for a while he flourished; but after a time he was suspected of corruption and denounced by President Reed and others. Few men knew better when to bend before a storm, and he again avoided disaster by tendering his resignation to Congress, which promptly accepted it. Washington seems to have suspected his crookedness, and wrote Congress a letter indicating it. This Wilkinson, with characteristic pretense of injured honor, greatly resented. He at once wrote Congress[9] demanding a copy of Washington's letter, "which," he said, "involves my official conduct and integrity." Writing to a member[10] he said his resignation was not due to "conscious guilt and an apprehension of punishment," but to "the difficulty, if not impossibility, of obtaining a public opinion against the infallibility of General Washington, * * * An impeachment of his justice, be it ever so well founded, or so ably supported, would excite nothing more favorable than derision and contempt, and would be esteemed a sort of impiety." This unwilling tribute by the meanest to the noblest American is noteworthy.

[9] *Journal Continental Congress*, XIX, 374; *Papers of Continental Congress*, No. 79, XXIV, 301.

[10] McKean, April 8, 1781, *McKean Papers*, I, 46; Historical Society of Pennsylvania.

After the war, bankrupt in estate, but ambitious, resourceful, fascinating as ever, and pretending to be a member of a large mercantile company of Philadelphia,[11] Wilkinson in 1784 removed to Kentucky, where he soon began a daring career of speculation and political activity. His ambition was two-fold—wealth and military eminence. The high positions he had held in the eastern army, and his delightful personality gave him ready *entree* to the new and hardly formed society in Kentucky, and won him many loyal but deluded friends. He was, of course, careful to court those who had best standing and greatest influence, and few of them but afterwards paid dearly in money, or trouble, or reputation for associating with him.[12]

The August, 1785, convention, like its predecessor, appears to have been entirely harmonious. It unanimously adopted a resolution, reported by Judge Muter, calling for separation from Virginia, and ordering a petition for it to be forwarded to the Virginia Assembly, and also an address prepared to the Kentucky people stating the need for separation. (All appear on pages 66-72.)[13]

Nor was Virginia unwilling to grant Kentucky independence, for she was glad to be rid of the expensive burden of governing and defending it. On January 10, 1786, her Assembly passed an act providing that if the Kentucky people would hold another (third) convention and declare for separation under the terms of the act, then this next convention might name a day before September, 1787, when Virginia's authority over Kentucky should cease. Thereupon the Assembly Act was to "become a solemn compact, mutually binding and irrevocable; * * * provided, however, that prior to June 1st, 1787, Congress shall assent" to Kentucky's admission into the Confederation on the terms stated in the act. The act then says: "And to the end that no period of anarchy may happen to the good

[11] *Western Annals*, 263. He was merely supplied limited quantities of goods to sell in Kentucky and Tennessee by Barclay & Shiell, until Shiell's death in November, 1785. See Wilkinson's letters to Shiell, Kentucky Historical Society, MSS.; or photostat copies in R. C. Ballard Thruston's MSS.

[12] In this introduction extracts are freely taken from the writer's *Life of George Rogers Clark* and *History of the Revolutionary West in Diplomacy and Politics*, in preparation.

[13] Marshall labors to lead his readers to believe this petition and address were designed to prepare the way for a revolutionary separation; but neither paper supports such a charge, and he offers no other evidence of such a design. In fact, he says himself; "It is, however, believed that the real spirit of these papers was peculiar to the author [meaning Wilkinson], or embraced by a few only of the members of the convention." (Marshall's *Kentucky*, I, 210-213.)

people of the proposed state, it is to be understood that the said convention shall have authority to take the necessary provisional measures for the election and meeting of a convention at some day prior to the day fixed for the determination of the authority of this commonwealth and of its laws over the said district, and posterior to the first day of June [1787] with full power and authority to frame and establish a fundamental constitution of government for the proposed state, and to declare what laws shall be in force therein, until the same shall be abrogated or altered by the legislative authority acting under the constitution so framed and established."[14] The separation act also provided for a general election of delegates in August to the third convention to be held in September following, 1786.

In Fayette County two rival candidates for this third convention were destined to become the two leading characters in the so-called Spanish Conspiracy controversy. One was General Wilkinson, the other Humphrey Marshall, who was an ambitious, coarse-grained, shrewd young lawyer-politician of twenty-six, who seems to have had a positive mania for vindictive personal quarrel. In one of their speech-making encounters Wilkinson was unwise enough to offend his young opponent by treating him with sneering contempt and defeating him by an election trick. Doubtless sore over his defeat, and galled by witnessing the great popularity and influence of his more accomplished rival, Marshall was henceforth Wilkinson's inveterate enemy, tracking and pursuing him unflaggingly and savagely. In the same election, however, Marshall's father-in-law, Colonel Thomas Marshall, was elected as Wilkinson's colleague, and he seems to have been on quite friendly terms with him until two years afterward, when, in 1788, his suspicion of Wilkinson was aroused.[15]

During 1786, probably no one in Kentucky thought of a separation from Virginia without her consent, for that consent she had already willingly given. If anyone was then plotting secession from the Confederation, or any friendly dealings with Spain, we have no evidence of it. Yet, with much profession of lofty

[14] Hening's *Statutes at Large*, XII, 37-40.

[15] He was co-trustee with Wilkinson in 1786 for the infant daughter and wife of Colonel John Todd, deceased, and later trustee for the sale of Wilkinson's town lots. (Hening's *Statutes*, XII, 369, 390.) It was not until the latter part of 1788 that he seems to have had suspicions of Wilkinson.

sentiments and historic truth, and with persistent confusing of the chronology and relations of events, Marshall's history assumes and adroitly intimates that Wilkinson, Innes, Brown, and others were even in 1786 preparing for Kentucky's revolutionary secession; but he offers no evidence of any such design. In truth, there was none. There was, of course, discussion and, no doubt, difference of opinion about the desirability of separation from Virginia, but none over any proposal of a revolutionary separation, or "violent separation," as it was afterwards commonly called.

When the terms of the Virginia act of separation became known in Kentucky, several of them led to considerable discussion; for example, those relating to the assumption by Kentucky of a share of the state debts, its jurisdiction over the Ohio River, and restrictions upon its power to tax the lands of non-residents; but, so far as we are informed, no suggestion of a "violent separation" from Virginia, not to mention secession from the Union.

Alarming Indian warfare prevented a quorum of delegates from assembling for the September, 1786, convention, which was not convened until in January, 1787. Then its proceedings were harmonious. The new state seemed assured and nearly everybody pleased—a fact which should not be forgotten in view of the contrary impression given by Marshall's history. Evidently aiming to prepare his readers to accept the incriminating and very strained construction which he would afterwards put on an address and letter of Innes and on a letter and remark of Brown (all to be quoted presently), Marshall endeavors to make it appear that they were then hatching a scheme for revolutionary separation and Kentucky's secession from the Union. That no such scheme was contemplated, however, seems to be convincingly shown by the fact that, as soon as a quorum of delegates (including Innes and Brown) assembled in January, 1787, the convention, without a dissenting voice, "immediately resolved 'that it was expedient and the will of the good people of the district that the same should be a state separate from and independent of Virginia upon the terms of the act,'" which act expressly provided for Kentucky's admission to the Union. How little a violent separation was thought of by anybody is also strongly indicated by the fact that Wilkinson (the protagonist of violent separation, according to Marshall) uttered no word against the resolution, but voted for

it.[16] If, as Marshall labors to make us believe, Wilkinson and his friends (then including all or nearly all the delegates) were designing such a violent separation, their actions seem strangely inconsistent with their aims. In fact, as will soon clearly appear, Wilkinson never did design detaching Kentucky from the Confederation, although (for reasons to be explained) he did afterward in 1788 make great pretense of aiming to do so, and cunningly endeavored to make his many friends seem to be conspiring with him to do so. This Marshall never understood, and hence he wholly misconceived his successful rival's real designs.

After Wilkinson's election as a convention delegate in August, 1786, his time and crafty talents were fully employed otherwise than in furthering Kentucky's violent separation from Virginia or secession from the Confederation; for he was then busily engaged in concocting a cunning plot and forging evidences to undermine General Clark and succeed him as Commissioner of Indian Affairs for Congress and military leader in the west.[17]

Hardly, however, had the third convention passed its resolution for separation in accordance with the terms of Virginia's separation act, when amazing news reached the delegates. They were told the act had been repealed! A new act had been passed by the Assembly, calling for an election of delegates to still another (fourth) convention, to be held in September, 1787, to pass again on the question of separation. "It is not easy," says Marshall, "to describe the discomfiture and chagrin attending this communication."[18] In fact, how-

[16] Green's *Spanish Conspiracy*, 102. Marshall does indeed say that in the preceding August election campaign Wilkinson's stump address was designed "to precipitate the actual separation by arguments opposed to delay," and that "the speeches being over, some agitation appeared," and "opposition to his proposition for separation contrary to law"; but for this we have only Marshall's indefinite and hardly credible assertion. He makes no direct assertion that Wilkinson made such a "proposition," and as Virginia's consent to separation had been given when the speech was made, and nearly a year remained to get the assent of Congress, Wilkinson had little occasion to "precipitate * * * a separation," and it is hardly believable that he was trying to do so. The critical reader of Marshall's unfair work will beware of accepting any of its assertions about his opponents unless supported by some sort of proof.

[17] By amazing inventions, forgeries, and sleight-of-hand substitutions of documents, he fooled a number of his confiding fellow delegates into signing letters *seeming* to support his audaciously false representations about Clark to the Governor of Virginia. The present writer's *Life of George Rogers Clark*, now in preparation, sets forth the plot fully from the contemporary records. From it parts of this introduction are taken.

[18] Marshall's *Kentucky*, I, 254.

ever, the second act did not purport to repeal the first one, but did extend the time within which the Kentucky people might declare for a new state and obtain the assent of Congress to its admission to the Confederation.[19] Soon after the third convention adjourned, in January, 1787, other news reached Kentucky which fairly set the people afire. They learned that a northern majority of states in Congress, in order to secure for themselves a favorable commercial treaty with Spain, were attempting to bargain away our right to use the Mississippi for twenty-five or thirty years! Gardoqui, the shrewd Spanish minister at New York, offered Jay a treaty which would open to the merchant and shipping interests of the northern states an extremely lucrative trade with the Spanish colonies, *provided* Congress would agree to forbear the assertion of our right to use the river during all these years. Tempted by this prospect of profit for themselves, the seven northern states strongly favored the treaty; but the southern ones as vigorously opposed it, for it would cut off their western citizens from the world markets, and make their rich western lands bordering on the Mississippi almost worthless.

[19] As we have seen, the first act authorized the third convention to name a day before *September 1, 1787*, when the separation should take effect and make Kentucky an independent state, provided that before *June 1, 1787*, Congress should assent to the admission of the new state to the Confederation. (Hening's *Statutes of Virginia*, XII, 45.) The second act declares "it continues to be the purpose of the General Assembly that the said district shall become an independent state on the terms and conditions specified in the act aforesaid [the first act] *whenever the good people thereof shall so determine, and the United States in Congress shall approve thereof.*" (*Idem*, 240.) The second act also states that the reason for its passage was that the delegates to the third convention "have been hindered by unforeseen events from meeting at the time proposed [September, 1786] and determining the question referred to them; and it is considered that no such determination can now take place within the time necessary for its receiving the assent of Congress prior to the first day of June next [1787] as required by the [first] act." The second act then directs the election in *August, 1787*, of delegates to another (fourth) convention to be held the next month at Danville "to determine whether it is expedient for and be the will of the good people of the said district that the same be erected into an independent state *on the terms and conditions specified in the [first] act above recited.*" In that event the new convention was directed to "fix a day not later than the *first day of January* [1789] on which the authority of this commonwealth, and of its laws, under the exceptions specified in the [first] act above recited, shall cease and determine and the articles specified in the said act shall become a solemn compact mutually binding on the parties, and unalterable by either without the consent of the other. Provided, however, that prior to the *fourth day of July* [1788], * * * Congress shall assent" to Kentucky's admission to the Confederation. The only substantial difference between the two acts seems to have been to give the Kentucky people more time for declaring their desire for separation and for procuring the assent of Congress. The second act concludes with a direction to the Virginia delegates in Congress "to use their endeavors to obtain from Congress a speedy concurrence in the measure proposed in this and *the act heretofore passed.*"

The Articles of Confederation, however, expressly provided that "*Congress shall never * * * enter into any treaties * * * unless nine states consent to the same*"; and the northern states could muster for the treaty no more than seven of the thirteen state votes. Thereupon they resorted to an indirect method to attain their end. Congress had previously empowered Jay to make a treaty with Spain, but *only provided it should "particularly * * * stipulate the right of the United States to * * * the free navigation of the Mississippi * * * to the ocean.*" To get rid of this restriction upon his authority, seven northern states thereupon passed a resolution to rescind *so much only* of his existing authority as required this stipulation acknowledging our navigation right! This vote, they then boldly asserted, left him free to make a treaty including a forbearance of the use of the Mississippi as Gardoqui required. This attempted evasion of the Confederation article requiring the consent of *nine* states to a treaty, by removing the very vitals of Jay's existing authority, was plainly a mere quibble and political trick. Naturally it incensed the southern and infuriated the western people.

When, to all other causes of complaint on the part of the Kentuckians (their dire poverty; the desperate savage war they had endured for years after peace had come to their fellow-Americans east of the Alleghanies; the indifference to their danger on the part of their state and federal governments; and the closing of their only market outlet by the Spaniards) was added this plainly illegal attempt of the northern majority in Congress to barter away their navigation right, who can wonder that the Kentuckians were wrathful; or that they demanded a prompt separation from Virginia and a state government of their own to look after their own interests; or if many of them hotly denounced Congress; or if some talked of revolt from the Confederation, and others feared that continued injustice might bring it about?[20]

It was at this juncture, and when the Governor, Randolph, was forbidding the Kentucky people to defend themselves by expeditions against the Indians, that, on March 29, 1787, at the request of "a respectable number of the inhabitants," Muter, Innes, Brown, and Sebastian issued an address protesting against the threatened closing of the Mississippi. As Marshall quotes that address as showing a

[20] Secession, let it here be understood, was then hardly less demanded in New England, if the commercial treaty were defeated by the south, than in the west if the Mississippi navigation were bargained away by the north.

design on their part to prepare the Kentucky people to revolt from the Union, the reader will do well to read it at this point. (See page 76.) So far from having any such revolutionary purpose, the address, in view of the aggravating circumstances calling it forth, will be viewed by impartial minds as a very moderate expression of protest. The address itself declares its object to be to arouse such opposition to the threatened surrender of their navigation right "as may convince Congress that the inhabitants of the western country are united in the opposition * * * and will not tamely submit to an act of oppression which would tend to a deprivation of their just rights and privileges." This was the strongest language used in the address, and was doubtless intended as a threat that the western people would use the river despite any lawless attempt of Congress to cede away their right to do so; but the reader will find in it no evidence of design to prepare the way for Kentucky's revolt from the Union.[21] If, indeed, Congress had persisted in that lawless attempt, such a revolt might well have resulted, and this was freely predicted at the time.

Aside from the Convention Address of 1785 to the people, this address of Muter, Innes, Brown, and Sebastian is the only writing Marshall produces to show that any of the alleged conspirators ever wrote or received, before July 21, 1787, anything whatever having any reference to a violent separation from Virginia or a revolt from the Union. On that day, however, Innes wrote Governor Randolph a letter, which Marshall uses to convict him of plotting with Wilkinson and others to bring about Kentucky's secession from the Union. When the letter was written, let it be understood, Wilkinson was not in Kentucky. He had gone to New Orleans, whence he did not return until the following year, 1788; and Marshall offers no shred of evidence tending to show that Innes, or any other of the alleged conspirators, knew anything whatever about Wilkinson's object in going

[21] Muter was one of the four men signing the public address. But, while denouncing the *other three* men as traitors for signing it, Marshall says little or nothing in denunciation of *Muter* for doing so. Muter was an intimate of the Marshalls, and next year publicly opposed separation from Virginia without her renewed consent, whereupon Marshall lauds him as a loyal, "true-hearted citizen" (I, 302); still later, when Muter testified against him in a suit, Marshall insinuates that he was bribed to do so (*Idem* II, 78). That the address was not designed to further disunion is persuasively shown in Muter's letter to Madison, February 20, 1787 (*Madison Papers, Writings to Madison*, XIV, 89, Library of Congress), strongly favoring the new federal constitution.

to New Orleans, or what he did there, until after his return the next year. In fact, they never did learn his real object, or what he did there. Before his return, no letter or communication of any kind ever passed between him and any one of them which a diligent search of their correspondence has revealed. The only letter in which any of them had joined with Wilkinson was one to Governor Randolph in December, 1786, and that letter was also signed by Judge Muter and Colonel Thomas Marshall, who were the first two men who afterward joined Humphrey Marshall in opposing the alleged "Spanish Conspirators." In another letter to Governor Randolph, written on the same day, and also signed by Colonel Marshall and Muter, Wilkinson was nominated for appointment as Indian Commissioner for Congress to succeed General Clark, and was declared to be a person "against whom no exception can be taken."[22]

Let us now see the treasonable design Marshall professes to find in Innes' letter to Governor Randolph, written July 21, 1787. Surely the last man to whom Innes would have been likely to write a letter disclosing a treasonable design was Governor Randolph, who was not only officially responsible for suppressing any treason in Kentucky but was well known to be a most ardent champion of a stronger federal union. He was a leading member of the Convention then framing the Federal Constitution. Judge Innes, manifestly to emphasize the just complaints of the incensed Kentucky people and to warn the governor of the probable result of further neglecting them, said:

"The Indians have been very troublesome on our Frontiers, and still continue to molest us, from which circumstance I am decidedly of opinion that this western country will, in a few years, Revolt from the Union and endeavor to erect an Independent Government; for under the present system we cannot exert our strength; neither does Congress seem disposed to protect us, for we are informed that those very troops which Congress directed the several States to raise for the defense of the western country are disbanded. I have just dropped this hint to your Excellency for matter of reflection; if some step is not taken for protection, a little time will prove the truth of the opinion."[23]

[22] *Draper MSS.*, 14 S 88–91.

[23] Evidently to minimize the grounds of Kentucky's complaint here mentioned by Innes, Marshall treats the danger from the Indians as if nearly negligible, although the danger was well known to everybody at the time to be most serious. It was so declared by his father-in-law, Colonel Marshall, in the letter to Governor Randolph recommending Wilkinson for appointment as Indian Commissioner for Congress. (*Draper MSS.*, 144 SS 88.)

If Innes had been conspiring with Wilkinson, or with anybody, or was himself designing to bring about a revolt of Kentucky from the Union, it seems inconceivable that he would have written thus to anyone, and, of all men, to the Governor of Virginia. If, on the other hand, he was a friend of the Union, but feared that, unless corrected, the wrongs which the Kentucky people believed they were suffering from the Virginia government and Congress would bring about such a revolt, the governor was the very person to whom he would naturally have written this warning. Yet Marshall uses this letter as his most damaging evidence to show that Innes was plotting with Wilkinson and others to detach Kentucky from the Union in 1787. Furthermore, uninformed later writers have carelessly accepted and repeated Marshall's most unfair interpretation of the letter and treated it as proof of Innes' guilt. In truth, the warning given the governor of the danger of revolt seems persuasive evidence that Innes hoped thereby to bestir Virginia and Congress to prevent such a revolt.[24]

The public address signed by Muter, Innes, Brown, and Sebastian, and this letter of Innes to Randolph, are here particularly discussed because they are the main, if not the only evidences Marshall offers to support his labored contention that, even before Wilkinson went to New Orleans and met the Spanish governor, Miro, Innes and Brown were conspiring to detach Kentucky from the Confederation.

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[24] The quotation is from the letter as given by Marshall's kinsman and champion, Thomas Marshall Green, in his *Spanish Conspiracy* (84), and he says was copied for him at Richmond, Virginia, from the letter received by Governor Randolph. Littell's copy (p. 81) differs from Green's in many minor particulars. Because it does not contain the words "revolt from the Union," Green charges Innes with suppressing them when he gave the letter to Littell to print. Green gives nothing to support his charge, and a few considerations will show that he had nothing to warrant it. He does not claim that Innes, or anyone else, sent to Richmond for the copy of the letter which Littell received to print. Letter presses being then rarely used, it was the common practice for letter writers who wished to keep some record of what they wrote, to write first a more or less rough draft to be retained, and use that as a guide in writing the letter to be mailed. In doing this, one would often depart more or less from the wording of the first draft, altering expressions, leaving out some, and inserting others; and often the first draft was not corrected to correspond with the mailed letter.

The letter printed by Littell (p. 81) was doubtless copied from such a first draft retained by Innes. Comparing it with the letter printed by Green (p. 84), about a dozen changes of words and clauses are found—some being by omission, some by transpositions, and some by addition—besides some fifty changes in mere spelling, capitalizing, and punctuation. Except as indicating that Innes did not follow closely, or reform the first draft, when he wrote the mailed letter, none of these differences have any significance unless it was the absence of the words "revolt from the Union" in Littell's copy; but that Innes may have inserted them in the mailed copy, and simply failed to insert them in his retained copy, seems

Innes' letter, it should be understood, was written before the Federal Constitution was adopted, or made public, or even framed. The convention, which later promulgated it, was then sitting at Philadelphia behind closed doors, so that no one outside could tell what it would effect, if anything. It had been authorized only to recommend changes in the existing government under the articles of Confederation. No one but the members knew they would recommend doing away entirely with the Confederation and substituting a new government under a new Federal Constitution. The only union then existing was no substantial one, but merely a loose and disintegrating confederation of thirteen jealous and jarring states under a Congress possessing neither respectable power, nor public confidence. Under such circumstances, even had Kentucky, in 1787, actually revolted from such a discredited and almost non-existent union, it would have been no such reprehensible act as a revolt against the United States would have been twenty-five years later, in 1812, when Marshall's book was first issued, and when a real union had grown up under a strong, efficient, just, and highly esteemed national government.

Had a revolt from the Confederation really been favored, or even carried out by the Kentuckians in 1787, therefore, it would be mani-

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never to have occurred to Green. He assumes an intentional suppression of them by Innes.

The unreasonableness of Green's assumption will appear from several considerations: (1) whether the copy Littell used was procured by Innes or someone else at Richmond; or (2) whether the copyist *there* omitted the words "revolt," etc.; or (3) whether Littell received an original draft of the letter retained by Innes when he wrote and sent the letter to Governor Randolph; or (4) whether, when copying the original draft for Randolph, Innes inserted the words "revolt," etc.; or (5) whether, if Innes' original draft did contain the words "revolt from the Union," only a copy of it was given to Littell; or (6) whether that copy, by whomsoever made, contained those words, we do not know, nor did Green. In any one of these ways the omitted words may have been left out of the letter which Littell received, without the least intention to "suppress" them.

Again, if the omitted words were in an original draft retained by Innes, or in a copy of it received by Littell, they might have been accidentally omitted by either the copyist or the printer. Finally, the words of warning to Governor Randolph that were *not* omitted by Littell ("from which circumstances I am decidedly of opinion that this western country will in a few years act for themselves and erect an independent government; for under the present system we cannot exert our strength, neither does Congress seem disposed to protect us") *plainly meant* a "revolt from the Union." This was precisely what Marshall claimed was the meaning of those words, as quoted in Littell's book. The omission of the words "revolt from the Union," therefore, would not have changed the plain meaning of the letter, was of no real significance, and could hardly have been designed, as Green suspected, for the sake of suppression.

festly unjust to judge their motives by the standard of federal loyalty in 1812; yet this is what Marshall cunningly labored to make his readers do. Nor did he labor in vain. For want of better information, later historians—even most Kentucky historians—have accepted and repeated his unfair assertions, with the result that there is today a very general belief that, under Wilkinson's leadership, nearly all the leading men of Kentucky of his time were traitorously plotting with him and one another to detach Kentucky from the Union and ally her with Spain!

On the contrary, the writer makes bold to say that the people of no other section of the United States endured such wrongs from their state and Congress, or suffered such hardships, or made such sacrifices to remain in the Union, or resisted such temptations to secede from it, as the people of Kentucky—and this notwithstanding they were led by the very men Marshall charges with disunion designs. Certainly there was a strong sentiment for immediate assumption of independence of Virginia, when she was willing; certainly there was a strong opposition to having Kentucky's statehood hang upon the assent of a hostile northern majority in Congress; certainly when, year after year, Congress made practically no effort to relieve them from destructive raids by its Indian subjects north of the Ohio, and when the northern states were trying to vote away their navigation right and only market outlet, the Kentuckians were indignant and, as in New England, some talked of secession; certainly there was danger that they would be driven to secession, as Innes warned Governor Randolph; but if any of the Kentucky leaders advocated secession from the Union, as Marshall would have his readers believe, a surprisingly large number of the most eminent and highly esteemed of them (including many he never charged with disunion designs) were either unbelievably ignorant of public opinion in Kentucky, or else plain perjurers, for they testified under oath that there was never any such advocacy of secession to their knowledge. Immediate steps to declare Kentucky's independence of Virginia and frame a new state government were openly advocated by many leaders, but not secession from the Union.

In this connection it seems very significant that, although Marshall himself shows that the men he charges with that aim were the leaders of an overwhelming majority of the people, no motion was ever made in any one of the eight Kentucky conventions, nor a single

public address ever issued, nor a single speech quoted, which advocated secession from the Union! Had secession been their design, it seems passing strange that they did nothing to carry it out. Their contention was that—Virginia having twice expressed her willingness, and the need being plain—Kentucky was morally, if not technically, justified in setting up an independent state government without waiting for the assent of a hostile northern majority in Congress. They argued that Kentucky would be more likely to be promptly admitted into the Union if it had a separate government than if it applied for admission while part of Virginia; that, with a vote in Congress like any other state, it could secure protection of its rights.[25]

It was only after Wilkinson returned to Kentucky the next year (1788), and gave his own story (of course a false one) about his aim in going to New Orleans and what he did there, that any other Kentuckians appear to have learned anything about either. In fact, he had been having decidedly treasonable dealings with the Spanish governor, Miro; but his real object was not, as Marshall supposed, to detach Kentucky from the Union, for, as we shall presently see, that would have defeated the whole object of his scheming.

While Wilkinson was in New Orleans the *fourth* Kentucky convention was held in September, 1787. Marshall admits it was harmonious, saying: "With little debate it was decided, without a dissenting voice, to be 'expedient for the good people of the district that it should be separated from the rest of the state upon the terms and conditions prescribed by law,'" and that it was resolved "that a convention should be elected to meet in July, 1788, with full power and authority to frame and establish a fundamental constitution of government for the proposed state and declare what laws shall be in force therein."[26] The convention also addressed Congress, praying its assent to Kentucky's admission to the Union, and fixed December 31, 1788, for the termination of Virginia's authority.

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[25] Colonel George Nicholas, very soon after arriving in Kentucky, so wrote in 1789 to Madison. In his letter he said he was resolved "not to interfere in the politics of this country," but would "state to you my observations and the information I have received as to the parties and real situation."

[26] Marshall's *Kentucky*, I, 275.

In order that Kentucky's interests should be represented in Congress and that body urged to give prompt assent to its admission to the Union, the Convention also requested the Virginia Assembly to appoint a Kentuckian as a delegate to Congress. This the Assembly did, appointing John Brown, who was then a state senator from Kentucky,[27] and who thereupon left Richmond for New York, where Congress was in session. There he lived in the same house with his intimate friend and fellow delegate, Madison, and remained until his return to Kentucky in the autumn of the next year, 1788. Both favored and freely discussed the proposed new federal constitution, and advised about political affairs in Kentucky.

Madison afterwards wrote of Brown, with whom he said, "I was in intimate friendship when we were associated in public life," "I always regarded [him] * * * whilst steadily attentive to the interests of his constituents, as duly impressed with the importance of the Union and anxious for its prosperity."[28] Indeed Madison depended mainly on Brown to secure Kentucky votes in the Virginia Convention for adoption of the Federal Constitution; for the adoption was supposed to hang upon Virginia's action, and that, in turn, upon the votes of the Kentucky delegates. Madison's ardent fellow-worker for the constitution, Colonel George Nicholas, had written him: "The only danger I apprehend is from the Kentucky members, and one consideration only has any weight with them; a fear that if the new government should take place, that their navigation would be given up."[29] This statement was probably much too extreme, for, although the Kentucky members were intensely interested in the navigation, we have no reason to believe they were not also deeply concerned about the other great issues which divided the Virginia convention. The main difference dividing its members was not over the desirability of a stronger union of the states, nor over any specific clause in the proposed constitution (however warm may have been the contest over some of them), but it was over the question whether Virginia's ratification should be made conditional on certain fundamental amendments being first added to the instrument. George Mason,

[27] Collins' *Kentucky*, I, 328.

[28] Butler's *History of Kentucky*, 2nd Ed., Appendix, 518; Collins' *Kentucky*, I, 328.

[29] Hunt's *Writings of Madison*, V, 114 note.

Patrick Henry, James Monroe, and other great leaders considered these amendments necessary to secure the liberties of the people. Ten of the amendments were afterwards adopted by the states, and the subsequent history of our federal government has amply shown the need for nearly every one of them.[30]

Before the Virginia convention met, and when the champions of the new Constitution were mightily exerting themselves to secure votes for it, Madison wrote Washington: "I have written several letters since my arrival to correspondents in the district [Kentucky] with a view to counteract anti-federal machinations. I have little expectation however that they will have much effect, unless the communication they might call from Mr. Brown in Congress, should happen to breathe the same spirit; and I am not without apprehension that his mind may have taken an unlucky tincture from the difficulties thrown in the way of the separation of the district, as well as from some antecedent proceedings of Congress."[31]

Throughout his mission to the United States, Gardoqui's main business at New York was to establish friendly personal relations with the members of Congress, and to set the north and south, and the east and west, at loggerheads. To secure Spain's Louisiana possessions from invasion, his aim was to prevent the growth of American power, by fostering sectional animosities which might break up the Confederation; and the chief means he used to effect his purpose was the treaty he proposed to Jay. The tempting bait of commerce with Spain's dominions captured the northern states; the proposed closing of the Mississippi incensed the southern ones and infuriated their western people. Disaffection toward the Union was specially prevalent in New England, which it was feared would secede from the

[30] They guarantee religious liberty, freedom of speech and press; the right to bear arms and to petition against grievances; the right to be secure against unreasonable search and seizure; the right of a person accused to speedy trial by jury; to be informed of the nature of accusations, to be confronted by witness, to have counsel. The amendments prohibit compulsory quartering troops on the people; or compelling one accused to testify against himself; or depriving anyone of his life, liberty, or property without due process of law; or taking private property for public use without just compensation; or cruel and unusual punishments. The amendments then provide that the enumeration of rights given to the federal government shall not disparage others retained by the states, and that powers not delegated to the United States, nor prohibited to the states, are reserved to the states, or to the people.

[31] Doubtless the northern majority vote for the Spanish commercial treaty.

Confederation if the treaty were defeated; while in the south Patrick Henry declared "he would rather part with the confederation than relinquish the navigation of the Mississippi"; and he voiced the opinion of many.[32] Gardoqui's relations with many of the Congressmen, especially northern ones, were very friendly. How much he influenced them to delay consent to Kentucky's admission into the Confederation we do not know; but, knowing his policy, we may be pretty sure he did all he could to cause such delay.

The special mission of Mr. Brown, as the only Congressman from Kentucky, was to get the earliest possible assent of Congress to Kentucky's prompt admission to the Confederation; and accordingly he promptly offered and pressed a resolution for that purpose (pages 88-93).[33] His fellow-members well knew that this assent by Congress, if it was to be given at all, had to be given speedily; for the Virginia act granting Kentucky's separate statehood made the grant conditional on the assent being given before July 4, 1788. Every Congressman knew also that the states were then voting on the adoption of the new federal constitution, and that, if it were adopted by nine of them, the Continental Congress would soon become defunct.

Mr. Brown's resolution met fatal delays, for northern states were loath to admit another southern state into the Union to destroy their majority vote in Congress. He had presented his resolution in February, but weeks and even months passed, and not until May 30 did Congress take any notice of it. Then, instead of giving its assent, it merely resolved "that it is expedient that the said district be erected into a sovereign and independent state and a separate member of the federal Union," and appointed a committee to report an act accordingly! More days and weeks passed with no report from the committee, or any action by Congress, although every member well knew ratification of the new federal constitution was being voted on by the states, and that, if nine ratified, it would be too late for Congress to admit Kentucky into the Confederation. By July 2, nine states had ratified the new Constitution. Thereupon the committee was discharged, and Congress passed a resolution directing its secretary to notify the Virginia legislature and Samuel McDowell, president of

[32] John Marshall to Arthur Lee, December 5, 1787.

[33] See also *Journal of American Congress*, for February, 1788, Way & Gideon Edition, 1823, IV.

the Kentucky convention, in substance that it could do nothing more! Thus, by its own procrastination, Congress had rendered itself incapable of giving the assent which the Virginia acts had made a condition of Kentucky's statehood; and thereupon the technical question arose, and was much debated, whether its assent was any longer requisite. Separatists contended that it was not.

Such was the situation when Mr. Brown (who had received letters from both McDowell and Muter "requesting whatever information [he] might obtain" relative to the negotiations going on with Gardoqui about the Mississippi navigation) was approached by Gardoqui with an offer to open it to the Kentuckians, "if Kentucky will declare her independence and empower some person to negotiate with him * * * but that this privilege can never be extended to them while part of the United States, by reason of commercial treaties existing between that court and other powers of Europe."[34]

Mr. Brown's reception of this overture, and two letters which he promptly wrote to Judges McDowell and Muter informing them of it, Marshall makes the main and most plausible ground for his charge of treasonable conspiracy with the Spaniards, not only against Brown, but against all the other objects of his virulent attack. This he does by first carefully preparing his reader to believe that, for several years before Gardoqui's overture, they were all conspiring to prepare the people of Kentucky for a "violent separation" from Virginia and revolt from the Union. Sometimes he does this by wholly unsupported assertion, oftener by adroit insinuation, and always by strained and misleading constructions of their writings or other acts. Any but a very careful reader is pretty sure to be thus misled into believing that, by the time Gardoqui's proposal was made, Brown, Wilkinson, Innes, Wallace, and others had long been conspiring to sever Kentucky from the Union. What Marshall says in support of his charges being accessible to all, it is the object of this introduction to present their hitherto little understood side of the controversy; and attention will, therefore, now be called to some very material facts which he does not mention, but which tend to explain their course and vindicate their motives.

The first important fact to note is that, if Mr. Brown really had any treasonable understanding with Gardoqui, either before or when

[34] Brown's *Political Beginnings*, 146; Green's *Spanish Conspiracy*, 160.

he wrote his letters to McDowell and Muter, we have no shred of evidence that Innes, Wallace, Wilkinson, or any other Kentucky leader knew of it, or had any cause to suspect it. The only person who appears to have known anything about Gardoqui's overture to Brown, excepting themselves, was Mr. Madison, to whom Brown communicated it at the time. Marshall makes Wilkinson the protagonist of Kentucky secession, but offers no writing or other evidence —nor do we know of any—indicating that Brown had ever had any friendship, or any confidential personal or political relations with Wilkinson at any time before the Gardoqui overture, in July, 1788, or indeed at any time afterwards. Up to that day, so far as we know, they had never had any correspondence or any political dealings whatever, except as convention delegates. Both were members of the third convention (convened in January, 1787), but, as we have seen, its proceedings were harmonious; its votes for separation and admission to the Confederation were unanimous, and they were concurred in by both Thomas Marshall and Judge Muter, who—doubtless instigated by Humphrey—were the first men to support his Spanish Conspiracy charge. Aside from such convention voting, the only thing we know that Brown ever did with Wilkinson, before receiving Gardoqui's overture, was done in conjunction with Thomas Marshall and Muter.[35] It should be understood also that Brown never saw Wilkinson from May, 1787, to the fall of 1788; for he went as state senator to Richmond in the fall of 1787, was thereafter in New York attending Congress,[36] and stayed there until his return to Kentucky in the fall of 1788, which was after his alleged treasonable dealings with Gardoqui, and after he had written the letters to McDowell and Muter.[37] Let us now see what those dealings were.

Both Gardoqui and Brown afterwards gave accounts of their meeting when the proposal was made, and of what occurred. Gardoqui's was contained in a dispatch to Madrid, and refers to his proposal

[35] This was in December, 1786, when Muter, Thomas Marshall, Innes, and Brown were deluded by Wilkinson into signing two letters to Governor Randolph, which seemingly vouched for certain "testimonials" which they never saw, but which Wilkinson concocted and sent with the letters to Governor Randolph.

[36] *Journal of American Congress*, for January to July, 1788, Way & Gideon Edition, 1823, Vol. IV, Library of Congress.

[37] Brown's deposition, Library of Congress, *Innes Papers*, XXII, 259, etc.

only in exceedingly vague terms; but Brown's letters to McDowell and Muter stated the proposal plainly. Gardoqui's dispatch said:

"In my dispatches of 18th. April, I had the honor to inform your excellency of that movement which the District of Kentucky had renewed in consequence of the consent given by Virginia, (of which it forms a part) to its recognition and admission by Congress as a sovereign, independent state. The matter was agitated vigorously of late, and a committee named, composed of one member from each state, and afterwards upon consideration (as the order of the day) in a general session of Congress, it was agreed that the demand was just; though in view of the various circumstances of the time, it was referred to the new government.

"This determination was very distasteful to those who promoted the separation of the district, and particularly so to Mr. John Brown, a landed proprietor and resident in that District, who was interested in that matter, among others, as member in Congress. [Mr. Madison also found Mr. Brown chagrined by the refusal of Kentucky's admission to the Union, which he would hardly have been had he been plotting his district's secession from the Union.] Finally the business was passed over to the new government, in which the State of Virginia will be included as part, because of her consent to join the confederation, given before the fourth of the present month. Foreseeing some of the occurrences, I took occasion during the past year to cultivate the friendship of the aforesaid Brown, and to introduce such topics as I thought would produce good results.

"Our friendship gradually increased and my sentiments naturally made an impression on him, inasmuch as they touched upon those obstacles, imposed by our treaties with other nations, which forbade us according any extension of favor to his section of country [meaning the navigation of the Mississippi] while pertaining to the United States, artfully insinuating that only themselves could remove the difficulty; inasmuch as, if separated, they would afford excuse for regarding them as an interior district without maritime designs, and perhaps we could devise some plan for adjusting the markets so much needed in some of our possessions. I carefully observed his appearance as I told him this, and it *seemed to me* that I could discern the

satisfaction it gave. He said he would *reflect upon it* and would see me and talk at leisure upon the subject."[38]

It is important to note that Gardoqui here says only that, when he made his proposal, he "carefully observed [Brown's] appearance," and that "it *seemed* to me * * * *I could discern* the satisfaction it gave"; also that Brown said nothing more than that he "would *reflect upon it* and would see me and talk at leisure upon the subject." It is no less important to note that it was *after this first interview*, and *before any other with Gardoqui*, that Brown wrote his letters to McDowell and Muter; for Gardoqui goes on to say that when they *next* met, "several days" afterward, Brown told him "that he *had* * * * *communicated to his constituents* * * * the favorable reception he had discovered in me." According to Gardoqui himself, therefore, in the only interview Brown had with him before writing to McDowell and Muter, he did nothing more than hear Gardoqui's proposal, and say he would reflect upon it, and talk with him later about it. He committed himself to nothing. In writing to his superior, Gardoqui could not say he had effected any understanding with him whatever.

Such was the situation when Brown wrote to McDowell and Muter. Whatever may have been his object in writing to them, it could not have been, as Marshall contends, to further a previous understanding with Gardoqui, for there was then no such understanding. Gardoqui indeed does go on to tell of a second meeting, and describes Brown as making some vague and hardly intelligible statements, from which Gardoqui seemingly *infers* a favorable reception of his proposal, but this was *after* Brown's letters were written. The material point is that those letters, so far from having been written in furtherance of a treasonable understanding with Gardoqui, were written when, according to the Spaniard's own account, he had not been able to draw so much as one word of approval of his proposal. Mr. Brown always utterly denied that he ever approved it, and his rectitude throughout a long and distinguished career was never impeached, so far as we can find, by anyone save Humphrey Marshall and his partisans and copyists. We may be sure that Gardoqui's dispatch did not minimize the impression his overture made, for both he and Miro were keenly ambitious to commend themselves to their superiors at Madrid

[38] Brown's *Political Beginnings*, 146. Present writer's italics. Also Green's *Spanish Conspiracy*, 160, footnote.

by securing Spain's exclusive control of the lower Mississippi and detaching Kentucky from the Union. They became jealous rivals, and each inclined to magnify what he had accomplished and to raise false hopes of success. Both were political tricksters, and Gardoqui especially skilled in the diplomatic art of lying. His report of his second meeting with Brown is given in the footnote below.[39]

Having now seen what occurred between Gardoqui and Brown before the latter wrote his letters to McDowell and Muter, let us next consider (1) Brown's situation when they were written; (2) why they were written to those two men; (3) exactly what he did write; and (4) what evidence of treasonable design, if any, they disclose.

When Virginia had twice expressed willingness, and Congress had declared it expedient, that Kentucky should "be erected into a sovereign and independent state and a separate member of the federal union," Mr. Brown and many other leading Kentuckians had made no secret of their desire to proceed to adopt a constitution and organize a state government separate from Virginia. Whatever may be thought of their legal justification for doing that, they always indignantly denied that they designed detaching Kentucky from the Union. On the contrary, they argued that, if separated from Virginia, Kentucky would be far more likely to be admitted promptly into the Union; for, so long as it remained part of Virginia, it would continue to be difficult, if not impracticable, to get Virginia, Kentucky,

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[39] Gardoqui's dispatch continues: "Several days passed and he came to this house, where a few days since we had a long conversation in which we renewed the subject, and I repeated the same and other observations. He *seemed* quite satisfied and obliged to me, and admitted, in confidence, that he had, by a messenger who had left some days before, *communicated* to his constituents the *decision of Congress* concerning the separation [the decision concerned separation only from Virginia], referring to the favorable disposition he had discovered in me, and, in short, that he *hoped* to communicate matters of importance *productive of benefit to that country*. [Up to this point Gardoqui shows diplomatic politeness on Brown's part, but could report nothing more—not a word of assent to his overture.]

"He told me, in conclusion, that this month the convention would meet, and that he expected it would resolve upon the erection of an independent state [independent from Virginia—not of the Union]; that he expected to leave this place the 1st of August, and that he would arrive in time to inform and aid *what he had discussed with me*, for he deems it a very fit and important subject for *consideration*."

This clause, "aid what he had discussed with me," is too vague for intelligible interpretation. Even the most forced construction of it could make it mean no more than what Gardoqui had already stated that Brown said he would do, namely, (1) communicate to his constituents the decision of Congress about Kentucky's admission; (2) the "favorable disposition he had discovered in me"

and Congress to agree upon identical terms and time for the establishment of the imdependent state and its admission to the Union. On the other hand, with Kentucky independent of Virginia, Congress would hardly have dared refuse it admission; for that would probably have forced it into alliance with Great Britain or Spain, and perhaps carried with it the whole western country. On the other hand, Marshall leads his readers to believe that Virginia and Congress would have forced Kentucky back into its previous *status* as part of Virginia; but he must have known that neither had sufficient motive or power to do that.

When Congress kept putting off Brown's motion for Kentucky's admission, and finally refused it, he naturally attributed his defeat to the jealousy of the northern states. If, by reason of this, or for any other reason, he was really led to plot Kentucky's secession from the Union, and wrote his letters to Muter and McDowell to further the plot, then why did he write the letters to those two men? Had he any reason to believe either of them would aid him in carrying Kentucky out of the Union? Even Marshall does not openly assert this of McDowell, whose reputation for rectitude and loyalty was too well established for such a charge to have any believers. Judge Muter he describes as a loyal, "true-hearted citizen," "in a manner an inmate of Colonel Marshall," and says: "Mr. Brown had miscalculated one of his men," meaning his assuming that Muter would help him to further Gardoqui's scheme.[40] If Brown had, in fact, entered into that

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[Gardoqui]; (3) that he "hoped to communicate matters of importance productive of benefit to that country" [Kentucky]; (4) that the Kentucky convention, "he expected, * * * would resolve upon * * * an independent state," and (5) that he "expected * * * he would arrive in time to inform and aid" in doing those four things—not one of which indicated any approval of Gardoqui's overture. Even, therefore, if we assume his dispatch was uninfluenced by any desire to make Brown seem to be more favorable to the overture than he really was, Gardoqui reported nothing tangible to weigh against Brown's statement that he merely heard the overture and promptly communicated it to Judges McDowell and Muter, and to Mr. Madison.

Gardoqui then adds: " * * * for the present he thanked me for himself and in the name of all the country, which would be under lasting obligation to me." (Green's *Spanish Conspiracy*, 160-161, note. Also Brown's *Political Beginnings*, 147.) Present writer's italics.

[40] Marshall's *Kentucky*, I, 302, and II, 78. Later, when Innes brought a suit for slander against Marshall, and Muter testified that he never knew of anyone advocating secession from the Union, and did not so interpret Brown's letter to him, Marshall charges him with going over to his opponents to win their favor and get appointed to a judgeship! He makes similar charges, also, against Colonel Crockett, who had been of his faction, but testified against him.

scheme, and wrote Muter to get his co-operation in carrying it out, then the reader will naturally expect the letter not only to show Brown approving the scheme, but suggesting that Muter should take some step to further it; but the letter shows no such suggestion. It reads as follows:

"New York, July 10th, 1788.

"Dear Sir:

"An answer to your favor of the 16th. of March was, together with several other letters, put into the hands of one of General Harmar's officers, who set out in May last for the Ohio, and who promised to forward them to the district; but I fear that they have miscarried, as I was a few days ago informed that his orders had been countermanded, and that he had been sent to the garrison at West Point. Indeed I have found it almost impracticable to transmit a letter to Kentucky, as there is scarcely any communication between this place, and that country. A post is now established from this place to fort Pitt, to set out once in two weeks, after the 20th. inst; this will render the communication easy and certain.

Before this reaches you, I expect you will have heard the determination of congress relative to the separation of Kentucky, as a copy of the proceedings has been forwarded to the district by the secretary of congress, a few days ago. It was not in my power to obtain a decision earlier than the 3rd. instant. Great part of the winter and spring, there was not a representation of the states sufficient to proceed to this business, and after it was referred to a grand committee, they could not be prevailed upon to report, a majority of them being opposed to the measure. The eastern states would not, nor do I think they ever will assent to the admission of the district into the union, as an independent state, unless Vermont, or the province of Maine, is brought forward at the same time. The change which has taken place in the general government is made the ostensible objection to the measure; but the jealousy of the growing importance of the western country, and an unwillingness to add a vote to the southern interest, are the real causes of opposition; and I am inclined to believe that they will exist to a certain degree, even under the new government to which the application is referred by Congress.

The question which the district will now have to determine upon, will be: Whether, or not, it will be more expedient to

continue the connection with the state of Virginia, or to declare their independence and proceed to frame a constitution of government? 'Tis generally expected that the latter will be the determination, as you have proceeded too far to think of relinquishing the measure, and the interest of the district will render it altogether inexpedient to continue in your present situation until an application for admission into the union, can be made in a constitutional mode, to the new government. This step will, in my opinion, tend to preserve unanimity, and will enable you to adopt with effect such measures as may be necessary to promote the interest of the district. [This last sentence plainly relates to what immediately *precedes* it. "This step," which Brown says, "will in my opinion tend to preserve unanimity and will enable you to affect such measures as may be necessary to promote the interest of the district," manifestly refers to Kentucky's *separation from Virginia* and the framing of a constitution of government for Kentucky; but in Marshall's copy of the letter the sentence beginning with the words, "This step," which Brown recommended, is detached from the preceding words, and, as the beginning of a new paragraph, is made to introduce the succeeding paragraph containing Gardoqui's proposal. The result is that an unwary reader is led to think that the "step" Brown recommends is that proposal!][41]

In private conferences[42] which I have had with Mr. Gardoqui, the Spanish minister at this place, I have been assured by him in the most explicit terms that if Kentucky will declare her independence, and empower some proper person to negotiate with him, that he has authority, and will engage to open the navigation of the Mississippi, for the exportation of their produce, on terms of mutual advantage. But that this privilege never can be extended to them while part of the United States, by reason of commercial treaties existing between that court, and other powers of Europe. As there is no reason to doubt the sincerity of this declaration, I have thought

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[41] Green's *Spanish Conspiracy*, 171. As the original letter cannot be found, but was given by Muter to one of the Marshalls for publication, and as we have only Marshall's copy of it, it cannot be asserted that the paragraphing was altered by the copyist; but the dislocation of the sentence, "This step," etc. is plain. It seems in the last degree probable that it was due to the copying. The correctness of the copy in other particulars we have no way of testing.

[42] It seems very questionable whether Brown used the plural here, "conferences," for when he wrote the letter, he had only had *one* conference with Gardoqui.

proper to communicate it to a few confidential friends in the district, with his permission, not doubting but that they will make a prudent use of the information,—which is in part confirmed by despatches yesterday received by congress from Mr. Carmichal, our minister at that court, the contents of which I am not at liberty to disclose.

"Congress is now engaged in framing an ordinance for putting the new government into motion; it is not yet complete, but as it now stands the elections are to be made in December, and the new congress to meet in February; but it may undergo alterations. Ten states have ratified—this state is now in session—what the result of their deliberations will be, is as yet doubtful; two-thirds of the members are opposed, but 't is probable they may be influenced by motives of expediency. North Carolina will adopt—time alone can determine how far the new government will answer the expectations of its friends; my hopes are sanguine, the change was necessary.

"I fear, should not the present treaty at Muskingum prove successful, that we shall have an Indian war on all our borders. I do not expect that the present congress will in that case be able to take any effectual measures for our defence. There is not a dollar in the federal treasury which can be appropriated to that purpose. I shall leave this place shortly, and expect to be at the September term. I have enjoyed my usual good state of health, and have spent my time here agreeably.

"I am with great esteem your humble servant,
The Honorable George Muter. J. BROWN"

If, as Marshall assumes and asserts, this letter shows that Brown approved Gardoqui's proposal and wrote Muter to get him to further the Spaniard's scheme, then it seems most strange that the letter neither expressed such approval, nor asked Muter to do anything whatever towards furthering the scheme. On the other hand, if Mr. Brown had no such traitorous understanding with Gardoqui, then it was eminently proper that he should not keep the overture to himself as a close secret, but should communicate it to leading and discreet Kentuckians. This he promptly did by his two letters, one to the president of the Kentucky Convention, Judge McDowell, and the other to Judge Muter—both of them judges of the Supreme Court, charged with enforcing the law against treason, and them-

selves unsuspected of any treasonable aims. It was eminently proper also that Mr. Brown should communicate the overture *confidentially*; for public knowledge of it in Kentucky, coming fast upon the exasperating news that Congress had refused its admission to the Confederation, might well have aroused an overwhelming demand for secession and acceptance of Spain's offer to open the Mississippi. So far, therefore, from proving that Brown was aiming to bring about Kentucky's secession from the Union, as Marshall charges,[43] the suggestion in both letters that the communication of the overture should be treated as confidential strongly indicates that Mr. Brown wished to *avoid* arousing the secession spirit amongst the Kentucky people.

That Mr. Brown had no treasonable aim in listening to Gardoqui's proposal, or in communicating it to McDowell and Muter, or in suggesting that his communications were made in confidence, and with the expectation that a "prudent use of the information" would be made, seems also persuasively shown by the fact that he communicated it to Madison, of all men the last to whom any sane man would have divulged treason against the Union. Brown's own explanation, as quoted in *The Political Beginnings of Kentucky*,[44] was as follows:

"The fact is that from 1785, when the first convention met at Danville, on the subject of a separation from the State of Virginia, till 1792, when Kentucky was admitted into the Union as a separate State, no motion was at any time made, either in convention or to the people, to separate from the Union and form an alliance with Spain; nor was any measure to that effect discussed or advocated by any man. The proposition of Mr. Gardoqui originated with himself, and was suggested by him in conversation on the subject of his negotiation with Mr. Jay, and was communicated by me to Col. Muter and Col. McDowell, Judges of the Supreme Court, in reply to letters from them requesting whatever information I might obtain relative to that negotiation. At the date of my letter to Muter I intended to write letters of the same import to other friends who corresponded with me, but upon further reflection, and more especially after an interesting conversation with a highly distinguished statesman of

[43] Marshall assumes that Brown must have had treasonable designs in having "private conferences," "while a member of Congress * * * with the Minister of Spain," in listening to Gardoqui's proposal, and in receiving permission "to communicate it" to his friends. Had such an assumption been applied to every member of Congress, few could have escaped like incrimination.

[44] By his grandson, Colonel John Mason Brown, 159.

Virginia [Madison] relative to Gardoqui's project, I deemed it inexpedient to make any further communication on the subject, the public mind of Kentucky being in a high state of excitement in consequence of the rejection by Congress of the application to be admitted into the Union as an independent State."

Afterwards in reply to an inquiry from a Kentucky historian, Mr. Madison wrote the following letter:

"Montpelier, October 11, 1834.

"Dear Sir:

"I have received your letter of the 21st. ult., in which you wish to obtain my recollection of what passed between Mr. Brown and me in 1788 on the overtures of Gardoqui, 'that if the people of Kentucky would erect themselves into an Independent State, and appoint a proper person to negotiate with him, he had authority for that purpose, and would enter into an arrangement with them for the exportation of their produce to New Orleans.'

"My recollection, with which reference to my manuscript papers accords, leaves no doubt that the overture was communicated to me by Mr. Brown. Nor can I doubt that, as stated by him, I expressed the opinion and apprehension that a knowledge of it in Kentucky, might, in the excitement there, be mischievously employed. This view of the subject evidently resulted from the natural and known impatience of the people on the waters of the Mississippi for a market for the products of their exuberant soil; from the distrust of the Federal policy, produced by the project for surrendering the use of that river for a term of years; and from a coincidence of the overture in point of time, with the plan on foot for consolidating the Union by arming it with new powers, an object, to embarrass and defeat which, the dismembering aims of Spain would not fail to make the most tempting sacrifices, and to spare no intrigues.

"I owe it to Mr. Brown, with whom I was in intimate friendship when we were associated in public life, to observe that I always regarded him, whilst steadily attentive to the interests of his constituents, as duly impressed with the importance of the Union, and anxious for its prosperity. I pray you to accept with my respects, my cordial salutations.

"Signed

"Mann Butler, Esq. JAMES MADISON."[45]

[45] Collins' *Kentucky*, I, 328.

In printing Mr. Brown's letter, Marshall italicizes and dwells on every clause, sentence, or word which may arouse his reader's suspicion of treason, but makes no mention of any part militating against his hostile construction of the letter.[46] Thus he ignores that part of the letter in which Brown expresses to Muter his "sanguine" hope that "the new government will answer the expectation of its friends." As the chief object of that new government was to secure a permanent and strong *Union*, if Brown was plotting disunion, it seems hardly believable that he would have expressed such sanguine hopes for the success of the new government in a letter to Muter designed to enlist the latter's aid in bringing about disunion! Yet that is what Marshall leads his readers to believe.

With Mr. Brown's letter to Judge McDowell was enclosed an unsigned paper marked "confidential," and stating Gardoqui's overture. Marshall and his copyists scent secret treason in this word "confidential," yet a moment's reflection will show the injustice of such a suspicion. Judge McDowell was president of the convention, and Mr. Brown doubtless both expected and intended him to show his signed letter to other delegates, and perhaps read it in open convention. Indeed, it was thus openly read. As we have seen, however, it would have been most dangerous to the peace of Kentucky, and to the integrity of the Union, for Gardoqui's overture to be made public. It was to prevent this, no doubt, that Brown communicated Gardoqui's overture to McDowell on a separate paper enclosed in the letter and marked "confidential." Had the overture been inserted in the body of the letter, McDowell must either have withheld the whole letter from the convention, or else have made Gardoqui's overture public, and thus set the people afire with excitement. Brown's care to avoid publicity of the Gardoqui proposal, instead of showing him secretly plotting to lead the Kentucky people into secession, strongly evidences his desire to prevent it. As Muter had no occasion to read to the convention the letter to him, Mr. Brown communicated the overture in the body of that letter.

Although President McDowell read to the convention the contents of Mr. Brown's open letter to him, it was not until 1806 that he disclosed the purport of the confidential slip stating the Spanish

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[46] Marshall's *History of Kentucky*, I, 304-306.

overture. As Marshall was then villifying Brown in the *Western World*, Judge McDowell published the following statement:

"CERTIFICATE

"Having observed in the Western World a publication in which Mr. John Brown is charged with having been engaged in a treasonable conspiracy to transfer and subject this country to the dominion of Spain, and having seen with surprize that a letter written to me in 1788 by Mr. Brown is referred to as containing the evidence of his guilt, I do, in justice to Mr. Brown, hereby declare that I never received from him any communication, either written or verbal, which could authorise or justify the statement contained in that publication.

"In the year 1788, when the application of the people of Kentucky to be admitted into the union as an independent state, was depending before Congress, Mr. Brown was a member of that body; and was, as I have reason to believe, very anxious that Kentucky should be received into the Union as a state, and used his best exertions to effect that object.

"After that application had been laid over for the consideration of the new government, Mr. Brown wrote me a letter informing me of the fate of the application, and stating the reasons in his opinion of the failure. In that letter was enclosed a paper containing a statement in the hand writing of Mr. Brown of which the following is the substance, and to the best of my recollection, the very words made use of, viz.

" 'In conversation I had with Mr. Gardoqui, the Spanish minister, relative to the navigation of the Mississippi, he stated that if the people of Kentucky would erect themselves into an independent state and appoint a proper person to negociate with him, that he had authority for that purpose, and would enter into an arrangement with them for the exportation of their produce to New Orleans on terms of mutual advantage.'

"That paper contained the above statement of Gardoqui's remarks ONLY, for Mr. Brown subjoined no observations expressive either of his approbation or dis-approbation, which induced me to conclude that it had been forwarded merely for information. Mr. Brown never intimated to me, either that time or any other, that Mr. Gardoqui had ever on any pretence made him any propositions tending to his personal aggrandizement, as has been erroneously suggested in

the Western World. And as to the alledged project of subjecting Kentucky to the government of Spain, and of raising an army to maintain a revolt against the United States, I do declare that nothing of the kind was ever suggested to me by Mr. Brown, nor to the best of my recollection did I ever hear that such ideas were at any time advanced or advocated by him or any other person in the Western Country, until I saw the charges published in the Western World.

"I regret very much that it is not in my power at present to find the letter and paper above mentioned; I fear they are lost or destroyed. About ten years ago I removed to Jessamine, from Mercer county, and left my son Joseph in possession of my house, in which I left a large bundle of old letters and papers. Three or four years after my removal, my son informed me that all the old letters and papers I had left behind were destroyed, and as I cannot find the letter and paper referred to among the papers now in my possession, I suspect they were among those left in Mercer county.

"August 4, 1806. SAMUEL McDOWELL"[47]

With one further comment in the footnote below concerning Mr. Brown, let us now leave him, his letters, and Gardoqui's overture, and go back to 1787.[48]

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[47] Post page 97, and *Western World*, No. 6, I, August 9, 1806.

[48] Except those letters and Gardoqui's unintelligible account of his and Brown's second interview, we have only a hearsay report in a letter from Miro to Valdes, which might, on a superficial reading, seem to show Brown expressing himself as favoring Kentucky's secession from the Union and connection with Spain. Even on its face, however, Miro's statement gives no warrant for any such conclusion. His letter purports to relate a conversation between Brown and Oliver Pollock in Philadelphia, as repeated by Pollock.

The devious methods of both Gardoqui and Miro impair the value of their testimony, especially if self-interest was likely to color their statements; and each of them was naturally interested in vindicating the hope he had awakened at Madrid that he would soon succeed in bringing about Kentucky's detachment from the Union and alliance with Spain. Assuming, however, that Miro was trying to report truthfully what he says Pollock told him, his statement on its face shows that either he did not repeat correctly what Pollock said, or else Pollock did not report correctly what Brown had said to him. Miro's statement (with bracketed comments and italics added) reads as follows:

"Oliver Pollock * * * disclosed to me that Mr. Brown told him in confidence that, in the debates of that body on the question of the independence of that territory, he saw clearly that the intention of his colleagues was, that Kentucky should remain under the jurisdiction of Congress, like the country of Illinois, and that a governor should be appointed by them for that province as for the other; [Brown certainly never made any such statement, for he and Pollock both knew Kentucky was not a territory under the jurisdiction of Congress, like the Illinois, and that Congress had no power to appoint such a governor] but

During the great ferment in the western country that year, following upon the news of Jay's proposed treaty, Wilkinson saw an opportunity for a great scheme of personal profit. He knew the Spanish dread of an invasion of Louisiana by the western Americans to open the lower Mississippi, and he designed nothing less than to ignore the Spanish order prohibiting Americans from using the river, to go to New Orleans with a boat-load of Kentucky products, to defy Miro, the Spanish governor there, then placate and deceive him, and finally to win him over to his scheme, and get for himself an exclusive and enormously profitable privilege of trade with New Orleans! In return he designed offering the Spanish King his great influence in Kentucky to detach it from the United States and make it an independent, friendly buffer state to shield Spanish Louisiana.

In pursuance of this plan, he sent a boat with Kentucky products to New Orleans, and himself boldly followed. Before leaving, however, in order to prevent arrest and the confiscation of his boat and cargo, he instructed a confidential agent there (who later became his partner) to warn Governor Miro that arrest of so eminent an American would likely cause war and perhaps Spain's loss of Louisiana. Under instructions the agent even suggested to Miro that it was probably Wilkinson's real purpose to provoke his own arrest in order to bring on a war and conquest of Louisiana, and that it would therefore be

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that, as this was opposed to the welfare of the inhabitants of Kentucky, he was determined to return home (which he did before Pollock's departure from Philadelphia), and, on his arrival, to call a general assembly, of his fellow-citizens, in order to proceed immediately to *declare themselves independent*, [Brown did favor having the Kentucky people "declare themselves independent," but independent of *Virginia*, not of the United States. He may well have told Pollock this. Miro does not say Pollock told him that Brown ever said anything about declaring independence of the *United States*.] and to propose to Spain the opening of a *commercial* intercourse with reciprocal advantages; [a proposal by an assembly of the Kentucky people of such a *commercial* intercourse would have been neither necessarily nor presumably an illegitimate one. Brown is not represented as saying a word about any political connection or understanding with Spain.] and that, to accomplish *this* object, [that is, "*commercial* intercourse," not secession from the Union or a Spanish alliance] he would send to Pollock the necessary documents, to be laid before me and to be forwarded to your excellency. He requested Pollock to prepare me for it in anticipation. [All that follows is merely Miro's inferential expectation, based on what Wilkinson had told him.] Your excellency will, therefore, rest assured that Brown, on his arrival in Kentucky, finding Wilkinson and his associates disposed to surrender themselves up to Spain, or at least, to put themselves under her protection, will easily join them, and it is probable, as Wilkinson has already foretold it, that, next spring, I shall have to receive here a deputation appointed in due form." (Green's *Spanish Conspiracy*, 155-156, footnote, present author's italics.)

safer for the Governor to receive the distinguished American courteously, instead of arresting him.

With Miro thus alarmed in advance, Wilkinson could pretty confidently expect an attentive hearing, and this he received. He explained to Miro the grievances and restlessness of the Kentucky people under the neglect of Virginia and Congress, their extreme need for the free navigation of the Mississippi, and their intention and ability to win it by invading Louisiana and driving out the Spaniards. He even audaciously represented that a great American army was being mobilized for the purpose by General Clark at Vincennes.[49] He then suggested that his influence in Kentucky was so great that, with Miro's co-operation, he could prevent this invasion, and (impelled only by a desire to secure the welfare of his suffering fellow-Kentuckians), he let the governor know that to do so he would be willing to make any personal sacrifice, even of his honor! Miro, greatly alarmed for the safety of Louisiana, was completely fooled, and soon fell into the traitor's scheme. Thereupon Wilkinson expatriated himself, took a secret oath of allegiance to the Spanish King, and undertook, as his Majesty's emissary, to detach Kentucky from the United States and make it the ally of Spain. This end he professed he would accomplish by letting the Kentuckians understand that, *provided* they would secede from the Union and make a friendly treaty with Spain, they should all be given the privilege of using the Mississippi and trading with New Orleans. To enable him to tempt the Kentuckians to take this step, however, he suggested that he should at first be given an *exclusive* privilege of trading with that place in Kentucky products, since this would make them envy his good fortune and leave the Union in order to share it. The exclusive trade privilege would, of course, yield him immense profit; but that, he pretended, would be merely incidental, his capital object being only to benefit his Kentucky brethren and his new Royal Master.

In truth Wilkinson never intended that the Kentuckians should get the trade privilege at all, for of course that would have ended his monopoly; nor did he aim to have them set up a separate state, for that would also end his monopoly. His plan was rather to dangle before Miro the promise of Kentucky's secession from the United States and dependence on Spain, while he dangled before the Ken-

[49] In reality Clark never had more than a handful of half-starved men there, nor dreamt of such an invasion of Louisiana.

tuckians the promise of an open market for their products at New Orleans; but all the time he would put off performance of both promises while his purse fattened on the profits he could make by buying the products of the Kentuckians on his own terms and selling them in New Orleans for several hundred per cent advance.

This pretended aim of Wilkinson gives the key to all his ensuing conduct, and explains the part he played in the Kentucky conventions after returning in 1788; but this was unknown and apparently unsuspected by his fellow-delegates, or Marshall who thought the traitor really did design detaching Kentucky from the Union. They did not understand that he pretended to be an agitator for "violent separation" from Virginia and secession from the Union only to keep Miro believing he would secure them. To effect that purpose, his constant aim was to make the convention records indicate that he was the accepted political leader in Kentucky and that public sentiment there favored such a separation and secession. How skillfully the records were made up under his manipulation will presently appear.

The traitor's scheme was certainly a most daring one, but he planned it with consummate skill, laid its foundations with elaborate care, was quick to see and utilize every agency and event which might contribute to its success, and—amazing to record—he carried it out precisely as planned! To Miro and the Spanish ministry at Madrid it was most welcome; for they foresaw that, if only the Kentuckians enjoyed the use of the lower Mississippi, the lands of Congress north of the Ohio, being denied any trade outlet, would be rendered unsalable; emigration from the east would, therefore, avoid those lands and go to Spain's ally, Kentucky; the insolvent Confederation, thus rendered unable to sell the public lands, upon which it relied for financial restoration, would almost inevitably fall to pieces. The federal republic, which the able Spanish diplomat, d'Aranza, had predicted, "though born a pigmy," would soon become "a giant, * * * even a Collossus," to destroy Spain's empire in America, would become thirteen small, jealous, quarreling, harmless sovereignties confined east of the Alleghenies—some probably allying themselves with Britain, some with France, others with Spain. Wilkinson knew Miro and his superiors at Madrid would like nothing better.

Miro was, of course, too wily to trust to Wilkinson's verbal promises, or to have no witness to them, so he called in to their conferences the Spanish Intendant, Navarro. The two Spaniards heard

what the American had to say, had him state his scheme in a signed "Memorial," and on September 25, 1787, sent it with elaborate comments of their own to Valdes, the Spanish Secretary of State at Madrid and President of the Council of the Indes.[50] They say of Wilkinson: "after ten or twelve days, which he asked to be given in order to rest, and having announced that he had projects of great importance to propose, he related to us all that is contained in the annexed Memorial, on which he offered to work as he really did, delivering it to us on the 3rd. of this month. He is a young man of about 33 years, although by his aspect he represents more, of exceedingly agreeable appearance, married, has three small children; in his manners and address he shows that he has received a very good education, which his uncommon talents have taken advantage of, as is evidenced in his memorial; trustworthy reports we have obtained are convincing circumstances that assure us he exerts the greatest influence in the said district of Kentucky, which would enable him to persuade the inhabitants of the country to follow his leadership in a critical moment.

"The Memorial explains itself so well that it would be presumptious on our part and wearisome to your Excellency were we to undertake to comment on it in its entirity, and we will therefore limit ourselves only to corroborating it and reporting upon the truth of its principal points. All he relates regarding the situation of the Western Settlements up to the Apalachian Mountains is absolutely certain, as also that they are powerful on account of their numerous population from which also results the certainty that Louisiana cannot resist their attacks, in the supposition of course, that it will not be judged advisable to pledge H. M. to maintain an army here."[51]

We may be sure that the "ten or twelve days" which Wilkinson "asked in order to rest" before relating his "projects of great importance" were not used in resting, but very industriously in finding out just how much Miro and the other high Spanish officials knew, or did not know, about affairs in the United States, particularly in Kentucky and the west; and what Wilkinson wanted to know he usually managed to learn.

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[50] Gayerre's *Spanish Domination*, 167, 186.

[51] *Pontalba Papers*, 4-5. Copies in the possession of the writer and Mr. R. C. Ballard Thruston.

Wilkinson's Memorial was a very able paper—unique in its ingenuity, amusing in its audacious fabrications, and pregnant with great results to his deserted and adopted countries.[52] In it he represented one hundred and fifty thousand western Americans "capable of bearing arms," ready to deluge Louisiana, and Great Britain as ready and plotting to aid them. He then proceeds to advise the best course for Spain to pursue to secure Louisiana and Mexico against American invasion, by detaching Kentucky from the Confederation and wrecking the United States. Such was this long hidden record of Wilkinson's infamy.

For over a century historians have been guessing about the nature and existence of this Memorial, which they generally supposed was hidden amongst the secret archives of Spain. Miro, however, retained duplicates of it and of his correspondence with Wilkinson, and fortunately they were preserved in France. Translated copies have been procured by Mr. Rogers Clark Ballard Thruston, president of the Filson Club, who gave one to the writer. They lay bare the traitor's whole plot and his shrewd devices to deceive both Miro and the Kentuckians.[53]

From New Orleans Wilkinson wrote his confidential friend General St. Clair (then president of Congress and, like Gates, more politician than soldier), saying he was charmed with the Spanish officials, and that, "whatever may have been my opinion, and whatever may be the opinion of others, I am convinced that the commercial treaty with Spain, on the principles proposed by Mr. Gardoqui, ought to be embraced by the United States. The subject has been viewed

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[52] Great, however, as were the results of this famous Memorial, they were not comparable to those caused by Wilkinson's little known plot, in the fall and December of 1786, to misrepresent General Clark to the Virginia executive and Congress and to secure his own appointment as Indian Commissioner for Congress; for the forgeries Wilkinson sent them in support of his plot alarmed the eastern leaders, killed Jay's treaty with Gardoqui and thus saved the tottering Union.

[53] Gayerre, author of an excellent history of Louisiana, could find no better information of the contents of the Memorial than was given thirty years before by Butler in his little history of Kentucky, which, although more trustworthy than most early histories of that state, was largely based on very limited and unreliable information. In the *Louisiana Historical Society Publications*, IX, a writer gives some extracts from the Memorial and Wilkinson's expatriation declaration, which he thinks "a courageous, frank, and sincere expression of his convictions, based on circumstances beyond his control!"

through a false medium by the southern interests, and, without reasoning upon it, I must observe that should they finally reject the proposition of Mr. Gardoqui, I fear they will soon have cause to regret the decision and weep over their own works."[54]

Without awaiting the approval of his king's government, Miro allowed Wilkinson to trade with New Orleans, and also gave him two non-committal letters to further his pretended scheme to detach Kentucky from the Union. One letter was designed to be freely exhibited to Kentuckians generally, the other to be shown by Wilkinson to "the notables," whom he represented as favoring his scheme.

Armed with these letters, the traitor took ship for Charleston and thence passed on to Virginia, where the people were then greatly agitated about the adoption of the proposed Federal Constitution. From Richmond Governor Randolph wrote Madison: "General Wilkinson, who is now here, is not to be appeased in his violence against the Constitution; and it is presumed that, through his means, the vote of Kentucky will have the same direction. He is irritated by Colo Harry Lee declaring that the surrender of the Mississippi would probably be among the early acts of the new Congress."[55] Of all things, Wilkinson wanted political disorder in the west—not efficient federal or state government. If he was to profit by his exclusive trade privilege, the controversy in Congress over the navigation must continue; the Kentuckians must be kept incensed about its proposed surrender; to Miro they must be made to seem almost ready for secession from the Union. Wilkinson wrote him that Kentucky would be an independent state by January 1, 1789, and soon, thereafter, would send treaty commissioners to New Orleans.

On his return to Kentucky, early in 1788, Wilkinson appeared like a conquering hero, "in a chariot with four horses," and, says Marshall, "soon it was rumored that he had made a contract with the Spanish governor which enabled him to ship tobacco and deposite it in the King's store at ten dollars per hundred. He forthwith proposed buying tobacco, and let it be known that he had an exclusive privilege

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[54] Library of Congress, Northwest Territory Papers (loose).

[55] Library of Congress, *Madison Papers*, Ac., 1081.

at New Orleans; spoke in high terms of the right of navigating the Mississippi, and of a commercial connection between the two countries, with occasional hints and innuendoes that nothing was necessary to bring it about but the separation and independence of Kentucky. He had previously encouraged the raising of tobacco,[56] and was now the buyer of that article; for which he sometimes paid a few Spanish dollars, and readily promised the residue. * * * A few there were whose suspicions were awakened 'that more was meant than a mere traffic in tobacco' but who, being left without any certain data on which to raise an accusation, and still less able to stem the current of popular opinion, now gathering and running in favor of Wilkinson, kept their conjectures to themselves, or whispered them to a few friends only."[57]

By the "few" here referred to as being suspicious of Wilkinson's designs, Marshall no doubt meant himself, his father-in-law, Colonel Thomas Marshall, and their intimate friend, Judge Muter, for it was they who first assailed the idea of a "violent separation" from Virginia. In fact, nearly the whole long controversy over the so-called Spanish Conspiracy seems to have been little more than an acrid personal and political quarrel between the members of the Marshall family and a few of their friends, instigated by Humphrey, on one side, and nearly all the other leading men of Kentucky on the other.

Although Marshall had no conception of Wilkinson's real policy in agitating and pretending to bring about Kentucky's secession from the Union and alliance with Spain, he was certainly right in charging him with treason. Wilkinson's estimate of Marshall himself amusingly appears in one of his letters to Miro. He had asked for $18,700 to bribe the "notables" of Kentucky to join his pretended scheme, but Miro, before he would advance the money, demanded the names of the persons to be bribed and the yearly amounts they would re-

[56] For this we have only the assertion of Marshall, who apparently did not know that Wilkinson's trade privilege extended also to Kentucky products other than tobacco. The assertion was evidently made to give color to the charge that, even *before* going to New Orleans, Wilkinson was planning a Spanish conspiracy with Innes, Brown, and others, and to prepare the reader to believe that Innes' letter to Governor Randolph showed his participation in the conspiracy.

[57] Marshall's *Kentucky*, I, 283.

quire.[58] In response Wilkinson gave him the following extraordinary "List of the Notables of Kentucky that should be pledged to H. C. M. [His Catholic Majesty] with a note as to the character of each.[59]

"Harry Innes, Esquire, attorney and counseller at law, now has $500.00 from the State of Virginia.....$1000.00
Benjamin Sebastian, Jurist.....$1000.00
John Brown, Member of Congress.....$1000.00
Caleb Wallace, one of our Judges, enjoys $1000.00 from the State of Virginia.....$1000.00
John Fowler, zealous advocate of our cause and a man of influence.....$1000.00
The above are confidential friends, who support my plans.

Benjamin Logan, lately a Major of Militia.....$ 800.00
Isaac Shelby, a planter of means and influence.....$ 800.00
James Garard, Colonel of Militia and a man of influence.....$ 800.00
These favor separation from Virginia and an amicable agreement with Spain.

William Wood, a Minister of great power.....$ 500.00
Henry Lee, Colonel of Militia.....$ 500.00
Richard Taylor, a planter of much influence.....$ 500.00
These favor separation from Virginia, but their aims do not go beyond that.

General Lawson arrived in Kentucky just at the time that I was leaving there; he is a gentleman of high attainments and Military knowledge, is my friend and will embrace our principles.....$1000.00
George Nicholas, has lately arrived in Kentucky; he is among the more wealthy gentlemen of the Country, of great ability and it will be a great point to attract him to our political aims. I have for some time been an intimate friend of his and I believe that he will offer his services.....$2000.00
Alexander Scott Bullitt, a man of means and ability, but very capricious. Nevertheless he will serve our cause.....$1000.00
Thomas Marshall, Surveyor.....$1000.00
Humphrey Marshall, a villain without principles, unscrupulous and may cause us much harm.....$ 600.00
George Muter, has $1000.00 from the State of Virginia$1200.00

[58] *Pontalba Papers*, 217.

[59] *Idem*, 223-227.

Green Clay, a private party of some influence	$ 500.00
Samuel Taylor, " " " "	$ 500.00
Robert Caldwell, Colonel of Militia	$ 500.00
Richard Sanderson, Surveyor, Popular, but not very capable	$ 500.00
Total	$18,700.00"

After his return to Kentucky, Wilkinson was busily occupied throughout the spring and summer in raising money, employing agents, buying tobacco, pork, and other Kentucky products, and securing boats and men to carry them to New Orleans; but he did not amass wealth as he had expected. Although he was receiving large profits on his shipments to New Orleans, he had lived ostentatiously on borrowed money, entertained lavishly, speculated unwisely in land schemes, and was always in straits to meet or evade his debts. Then, too, his promising New Orleans trade was subject to many mishaps; for his goods had to be sent far, their transportation down the river was difficult and dangerous, and return voyages even more so; while bringing the proceeds of his New Orleans sales overland through the Indian country was very hazardous. Furthermore, the multiplicity of his varied employments, his constant plotting, and his no less constant apprehension lest his treason be exposed, must have prevented his making the most of his trade privilege. Notwithstanding all these embarrassments, however, he could not neglect his political manipulations to keep Miro satisfied of his ability and intention to detach Kentucky from the Union. With that aim he became a member of the next (fifth) Kentucky convention, which met at Danville, July 28, 1788, and lasted only a few days.[60] Mr. Brown was still in New York and did not return to Kentucky until September.

While the convention was in session, the president, Judge McDowell, received notice from the Clerk of Congress that it had declined acting any further on the subject of Kentucky's admission to the Union. The result, says Marshall, was "deep felt vexation, * * * ill temper bordering on disaffection to the legal course of things; and some strong symptoms of assuming independent government," but that "these dispositions * * * [were] met with a determined countenance and overawed."[61] General, if not unani-

[60] Marshall's *Kentucky*, I, 288-290.

[61] Marshall's *Kentucky*, I, 289.

mous, "vexation" there certainly was, and hot denunciation by several members of the action of Congress; but that there was really any such "overawing" seems highly improbable from Marshall's own account of what the convention did. The neglect of Congress to protect the Kentucky people against its savage subjects north of the Ohio; its refusal to take steps to open the Mississippi; the attempt of its northern members to barter away the right of navigation; and now, after apparently designed delays, its refusal to assent to Kentucky's admission into the Confederation, all seemed cruel and naturally provoked denunciation. Apparently without a dissenting voice, however, the convention adopted a resolution with the following preamble:[62]

"Whereas it appears to the members of this convention, that the United States in congress assembled, have for the present, declined to ratify the compact entered into between the legislature of Virginia and the people of this district, respecting the erection of the district into an independent state; in consequence of which the powers vested in this convention are dissolved, and whatever order or resolution they pass cannot be considered as having any legal force or obligation; but, being anxious for the safety and prosperity of ourselves, and constituents, do earnestly recommend to the good people [to elect delegates to a new convention in November] and that they delegate to their said representatives full powers to take such measures for obtaining admission of the district, as a separate and independent member of the United States of America; and also to form a constitution of government for the district, and organize the same when they shall judge it necessary—or to do and accomplish whatsoever, on a consideration of the state of the district, may in their opinion promote its interests."[63] Then followed the resolution which recommended the election of delegates to a convention to be held in November to consider this recommendation, and requested the sheriffs to hold and certify such election.

When this resolution was passed, it was evidently deemed unobjectionable, since no member of the convention appears to have voted against it. But Marshall says: "It was in the course of this debate that the suspicion was awakened in the minds of some members of a sinister design in others, as the integrity of the Union was strongly

[62] Present writer's italics.

[63] See resolution in full, post page 94, and Marshall's *Kentucky*, I, 290.

implicated [meaning by the recommendations in the preamble quoted]. This embryo treason was, however, nursed with such caution by its progenitors, that no symptom was yet so palpable as to indicate the specific disease. Nothing was said in detail, which could be laid hold on so as to make the object palpable to common minds, but enough to let it be seen there was something concealed—and to produce attention to further developments, in a few, who were not, as well as those who were, members. When the proceedings came to be published, and thus subjected to cool and deliberate examination, they were not found to allay the suspicions which the debate had excited; on the contrary, they were thought by some of the most experienced and sagacious, fully to justify them."[64]

The resolution was afterward attributed by some to Wilkinson, by others to Judge Wallace. Marshall contends it was designed to bring about Kentucky's secession from the United States and alliance with Spain. If, as seems almost certain, Wilkinson was its author, it certainly had a very different purpose; for, as we have seen, the actual secession of Kentucky would have ended his trade monopoly. His aim being to keep Miro believing that Kentucky was about ready to leave the Union, the resolution was well calculated both to satisfy the Spaniard and deceive the other convention members, including Wallace. This Marshall never suspected, simply because he never understood that Wilkinson's real scheme was not to carry Kentucky out of the Union, but merely to make Miro believe that he would do so.

The recommendation in the preamble that the people should authorize a new convention "to take * * * measures for obtaining * * * the navigation of the Mississippi, * * * form a constitution of government, * * * and organize the same when they shall judge it necessary, or to do and accomplish whatsoever, on a consideration of the state of the district, may in their opinion promote its interests," Marshall contends was designed to give the new convention authority to bring about Kentucky's secession, and alliance with Spain. That construction was precisely the one Wilkinson wished Miro to put on the resolution; and this Miro did.[65]

When not a single member of the Marshall faction in the convention appears to have opposed the resolution, but all to have voted for

[64] Marshall's *Kentucky*, I, 293.

[65] *Pontalba Papers*, 132, etc.

it, it is only fair to assume that if Judge Wallace was led by Wilkinson to offer or second it, he probably had no more suspicion than the other members of the artful traitor's aim in wishing it adopted. That Judge Wallace either moved or seconded the resolution is a subject about which witnesses differed,[66] but assuming that he did, it seems most unjust to presume any such treasonable aim as Marshall attributes to him, or that he had the least suspicion of Wilkinson's designs. No man's integrity or loyalty was better established than Judge Wallace's. In his intimate correspondence with Madison, Jefferson, and others, he freely expressed his political views and advocated Kentucky's independence of Virginia, but he gave no intimation of disloyalty to the Union, either under the old or new federal government. An unbiased reader will hardly disbelieve his solemn denial that he ever favored secession or a connection with Spain. Indeed no one did favor either, 'though, to deceive Miro, Wilkinson pretended that he did, and thereby deceived Marshall also.[67]

Wilkinson himself gives an illuminating account of his motives in this July convention, in a letter to Miro. It is filled with falsehoods, but shows clearly that his real aim was to make the Spaniard believe he was working for Kentucky's secession. It reads as follows:

"Immediately after having sent you my despatch by Major Dunn, I devoted all my faculties to our political designs, and I have never since turned aside from the pursuit of the important object we have in view. If subsequent events have not come up to our expectations, still I conceive that they are such as to inspire us with flattering hopes of success in due time. * * * I discovered that the proposed new government of the United States had inspired some with apprehensions, and others with hopes—so much so that I saw that this cir-

[66] Whitsitt's *Caleb Wallace*, Filson Club Publications; Marshall's *Kentucky*, I, 290, etc.

[67] Colonel Richard Taylor, father of President Zachary Taylor, was a member of this convention and the succeeding one. He afterwards testified that Judge Wallace favored forming a constitution; that, as Virginia's sanction had been obtained, it was useless to ask it again, and that Congress would be pleased—could not be offended. But he said there was no sentiment against the Union and in favor of Spain; that he was an old officer, and no such sentiments could have escaped him; also that he was intimate with Wilkinson—saw his memorial—never heard him speak of a connection with Spain. (Library of Congress, *Innes Papers*, XXII, 254, abstract of testimony in suit of Innes *vs.* Marshall.) Many witnesses of highest repute testified to the same effect.

cumstance would be a cause of some opposition and delay. I also perceived that all idea that Kentucky would *subject* itself to Spain must be abandoned for the present, and that the only feasible plan to the execution of which I had to direct my attention was that of a separation from the United States, and an alliance with Spain, on conditions which could not yet be defined with precision.

"* * * The question of separation from the United States, although discussed with vehemence among the most distinguished inhabitants of this section of the country, had never been mentioned, in a formal manner, to the people at large, but now was the time for making this important and interesting experiment, and it became my indispensable mission to do so. I had to work on a ground not yet prepared for the seed to be deposited in it, and I felt that to produce a favorable impression I had to proceed with reserve, and avoid with the utmost care any demonstration which might be calculated to cause surprise or alarm. For these motives, I gave an equivocal shape to the expression of my design, speaking of it in general terms, as being recommended by eminent politicians of the Atlantic coast, with whom I had conversed on this affair, and thus, by indirect suggestions and argument, I inspired the people with my own views, without presenting them as such, because it would have been imprudent in me to divulge them under the existing circumstances, and I can give you the solemn assurance that I found all the men belonging to the first class of society in the district, with the exception of Colonel Marshall, our surveyor, and Colonel Muter, one of our judges, decidedly in favor of separation from the United States and of an alliance with Spain. At first, these two men had expressed this same opinion with warmth, but now their feelings have taken a different direction, from private motives of interest and personal pique; for which reasons I have very little to dread from their influence; but, at the same time, I foresaw that they would avail themselves of the opposition made by some literary demagogues, who were under the influence of fear and prejudice. Nevertheless, I determined to lay the question before our Convention, and I took the necessary measures accordingly.

"I was thus occupied until the 28th. of July, on which day our Convention met at Danville, in conformity with the ordinance you saw in the Gazette which I sent you by Major Dunn. The Honorable Samuel McDowell, President of the Convention, had, the day before, received a packet from the Secretary of Congress, containing an ac-

count of the proceedings of that body on the subject which excited our solicitude—that is, our intended separation from the State of Virginia.

"You will remember that, in my memorial, I was of opinion that the Atlantic States would not consent to the admission of this district into the Union, as an independent State, but, on my return from New Orleans, I was induced to alter my opinion from the information which I received through persons of the highest authority, and, under that new impression, I wrote you by Major Dunn. Thus we were not prepared for an unexpected event, of which we could have received no premonition. You will at first sight discover, on perusing the aforesaid paper No. 1, that this Act of Congress was passed with the intention to gain time, amuse and deceive the people of this district, and make them believe that they could rely on the good dispositions of the Atlantic States, until the formation of the new government, when our opponents flatter themselves that it will be able to check our designs. Unfortunately, this artifice produced but too much effect on the members of this Convention, and confirmed the apprehensions of others.

"From this proceeding of Congress it resulted, that the Convention was of opinion, that our proposed independence and separation from Virginia not being ratified, its mission and powers were at an end, and we found ourselves in the alternative, either of proceeding to declare our independence, or of waiting according to the recommendation of Congress. This was the state of affairs, when the Honorable Caleb Wallace, one of our Supreme Judges, the Attorney-General Innis, and Benjamin Sebastian proposed a prompt separation from the American Union, and advocated with intrepidity the necessity of the measure. [Wilkinson's audacity in lying is certainly amusing.] The artifice of Congress was exposed, its proceedings reprobated, the consequences of depending on a body whose interests were opposed to ours were depicted in the most vivid colors, and the strongest motives were set forth to justify the separation. The arguments used were unanswerable, and no opposition was manifested in the course of the debates. It was unanimously conceded that the present connection was injurious to our interests, and that it could not last any length of time. Nevertheless, sir, when the question was finally taken, fear and folly prevailed against reason and judgement. It was thought safer and more convenient to adhere to the recommendations of Congress, and, in consequence, it was decided that the people be advised to

elect a new Convention, which should meet in the month of November, in conformity with the ordinance which you will find in the Gazette, No. 2.

"I am afraid of fatiguing you with these details, but I felt that it is my duty, in an affair of so much importance, to relate facts as they have occurred. You may also blame me for having raised this question so soon, and at a time when I had grounds to doubt of its being decided favorably, but I flatter myself that my intentions justify my course of action.

"To consolidate the interests and confirm the confidence of our friends, to try our strength, to familiarize the people with what we aim at, to dissipate the apprehension which important innovations generally produce, and to provoke the resentment of Congress with a view to stimulate that body into some invidious political act, which might excite the passions of the people; these are the motives which influenced me, and on which I rely for my justification."[68]

After the July, 1788, convention, controversy waxed warm over the legal right and the wisdom of immediate separation from Virginia and the framing of a new constitution for Kentucky; but up to the time of that convention we have nothing more than Marshall's assertions, suggestions, and innuendoes, and his deceptive misconstructions of the public address of Muter, Innes, Brown and Sebastian, and of Innes' letter to Governor Randolph, to show that there had ever been any proposal or controversy about secession from the Union, or alliance with Spain. It was the resolution of that July convention which aroused suspicions that led to the Spanish Conspiracy controversy. Mr. Brown's letters about Gardoqui's overture had not then been received.

Here attention may be called to Marshall's conflicting descriptions of Judge Muter's conduct at three different periods. He describes Muter as an "honest . . true hearted citizen" when divulging Brown's letter to Colonel Marshall and signing an address to the people of Fayette written by the latter and opposing "violent separation from Virginia"; but when Muter afterwards testified in favor of Innes in a libel suit against Humphrey Marshall and said he never considered Brown's letter as communicating anything treasonable, and declared

[68] Gayerre's *Spanish Domination*, 223-227. See also *Pontalba Papers*.

that no one to his knowledge had ever proposed Kentucky's secession from the Union or alliance with Spain, Marshall plainly insinuates that he had been bribed by a judgeship to desert the Marshall faction and go over to their opponents![70] In other words, Muter is made an "honest, true-hearted citizen," or bribable, as suited Marshall's contentions. He does not openly impugn Judge McDowell's character or loyalty, but does so by insinuation. After characterizing Brown's letter to Muter as containing a "precious bit of treason," and expressing "regret" that Judge McDowell had lost the letter he received containing the same "bit of treason," Marshall says: "Mr. Brown miscalculated *one* of his men,"—meaning Muter, and plainly implying that Brown did *not* miscalculate the other, McDowell, when he communicated the same "treason" to him also.[71]

At this point an interesting incident should be mentioned. Some time during this fall of 1788 Colonel John Connolly, claiming to act under authority from Lord Dorchester, the British Governor-General of Canada, came to Kentucky to propose that Great Britain would furnish a large force of troops, "arms, ammunition, clothing, and money" to assist the western Americans to seize New Orleans. With this view he visited Wilkinson and Colonel Thomas Marshall, but the exact dates of his visits, and the length of his stay in Kentucky, have been differently stated, and are not satisfactorily fixed. Several circumstances, not mentioned by Humphrey Marshall and doubtless unknown to him, tend to show that Connolly came to Kentucky early in the fall of 1788, and that he first went to see Wilkinson and afterwards Colonel Marshall. Wilkinson in his Memorial had, the year before, told Miro that "an English gentleman of rank approached me on the subject, and although he would not guarantee the conduct of his Court, did not however doubt that at whatever time the Western Americans would separate themselves from the primitive States, Great Britain would receive them under its protection with pleasure, and * * * would supply them from Canada, with arms, ammunition, clothing and money for attacking Louisiana and opening the Mississippi."[72] The "English gentleman" may have been Connolly, or the statement in the Memorial about him entirely fictitious. That Wilkinson invited Connolly to visit him, he said himself in a letter soon

[70] *Idem*, II, 78.

[71] *Idem*, I, 302, author's italics.

[72] *Pontalba Papers*, 29.

afterward to Miro;[73] that he directed Connolly to visit Marshall seems altogether probable.[74] Connolly's overtures to Marshall will be mentioned presently.

We are now approaching the culmination of the controversy over the alleged conspiracy, in the convention of November, 1788. A month before, an address to the people of Fayette, signed by Judge Muter (but really the "measure of Col. [Thomas] Marshall"[75]), contended that "forming a constitution of government and organizing the same, before the consent of the legislature of Virginia for that purpose first obtained, will be directly contrary to the letter and spirit of the act of assembly." The address then submits "to the consideration of the inhabitants of Fayette, whether it may not be necessary in their instructions to their delegates, to direct them not to agree to the forming a constitution and form of government and organizing the same, till the consent of the legislature of Virginia, for that purpose, is first obtained—nor to agree to make any application whatever to obtain the navigation of the Mississippi, other than to the legislature of Virginia and the congress of the United States."[76]

This address seems to have been the first publication indicating the existence of the factional controversy about the so-called Spanish Conspiracy, which soon afterwards became so bitter. Ever since Wilkinson defeated him, two years before, for the third convention of 1786, Humphrey Marshall had doubtless been watching for his opportunity to trap him, and meanwhile was impressing his suspicions upon his father-in-law and Muter; but he shows, himself, that even as late as the fifth convention of July, 1788, there was no tangible evidence which could be offered to support his suspicions. Yet, as we have seen, when he came to write his history, he labored through chapter after chapter to lead his readers to believe the conspiracy was hatched years earlier, in 1785 or 1786. It was not, however, until after the adoption of Wilkinson's resolution in the July, 1788, convention, that anyone except Marshall appears to have shared his

[73] Wilkinson to Miro, Gayerre's *History of Louisiana, Spanish Domination*, 235.

[74] *St. Clair Papers*, 98, 101-102; *Pontalba Papers*, 139; Gayerre's *Spanish Domination*, 225 *et seq*; Winsor's *Western Movement*, 373.

[75] Marshall's *Kentucky*, I, 297.

[76] Marshall's *Kentucky*, I, 296-297.

suspicions of such a conspiracy. But soon after this Muter showed the letter he had received from Brown to Colonel Marshall, who then, for the first time, appears to have shared Humphrey's suspicion about the conspiracy.

The sixth Kentucky convention met at Danville, November 3. As Wilkinson cunningly managed to guide most of its proceedings so that the record of them would convince Miro of his great influence and activity in furthering their scheme, and as Marshall represents Brown and others as co-operating with Wilkinson, it will be well here to follow the minutes of the proceedings somewhat in detail.[77] They show that on November 4, Colonel McDowell was unanimously elected president and Thomas Todd appointed clerk, and that it was resolved "that this convention will tomorrow resolve itself into a committee of the whole convention to take into consideration the state of the district." In this "committee of the whole," nearly all the business of the convention was transacted; and its chairman was always *Wilkinson*, except on one occasion to be particularly mentioned. The convention referred to this committee of the whole the resolutions of Congress, together with the resolutions of the September 1787 convention relative to separation from Virginia, and of the July 1788 convention "recommending the election and giving powers to this convention."

Aside from merely formal proceedings, the first step taken by the convention was to pass a resolution and appoint a special committee "to draw up a decent and respectful address to the Assembly of Virginia for obtaining an independence of the District of Kentucky agreeable to the late resolution and recommendation of Congress." The next resolution was one appointing another special committee to prepare and prefer "a decent and respectful address * * * to Congress to take immediate and effective measures for procuring the navigation of the Mississippi." This resolution seems to have been opposed by delegates of the Marshall faction, who wished to sidetrack the navigation question.

The next resolution offered—which Marshall's history does not even mention—is thus stated in the convention minutes: "A motion was made by *Mr. Brown* for the convention to come to the following resolution, viz: *Resolved, That it is the wish and interest of the good*

[77] They are copied in Brown's *Political Beginnings*, 257-263.

people of this District to separate from the State of Virginia and that the same be erected into an independent member of the Federal Union."[78] That Marshall makes no mention whatever of this resolution seems passing strange when he professes high regard for historic truth, and to be laying before his readers the facts concerning Brown's alleged treasonable designs in *that* convention. He devotes many pages to assertions, inferences, and innuendoes to prove that, *in this same convention*, Mr. Brown was trying to influence his fellow-delegates to enter into Gardoqui's scheme; but the record fact that Brown moved the convention to declare "the wish and interest of the good people of the district to * * * be an independent member of the Federal Union," Marshall utterly ignores! Yet he certainly knew the fact and its full significance. At the request of the Convention, its minutes, showing Brown's resolution, were printed in the *Kentucky Gazette*, and were used by Marshall in writing both his newspaper polemics and his polemical history. He was a shrewd lawyer, the real leader of his faction; for over twenty-five years he had been keenly at work to detect every slightest discoverable circumstance which might convict his opponent of plotting Kentucky's *secession* from the Union; yet, when Mr. Brown moves the convention to declare it to be the wish and interest of the Kentucky people to carry their state *into* the Union, Marshall does not mention it! As he repeatedly charges his opponents with suppressing material facts, the ingenuousness of his own argument would be less open to question if he had told his readers of this decidedly important resolution offered by Mr. Brown.

Nothing could have been further from Wilkinson's desire than the passing of this resolution. Doubtless for that reason, and by his contrivance, it was "laid on the table," and another resolution which he offered was passed instead. The minutes of the convention say it "was read and agreed to as follows, viz:

"Whereas, it is the solemn duty, so it is the ardent desire of this Convention, to pursue such measures as may promote the Interests and meet the approbation of their Constituents; but the discordant opinions which at present divide the good people they represent render it doubtful whether they can adopt any plan which will embrace the opinions of all, or even secure the support of a majority. In this

[78] Brown's *Political Beginnings*, 259. Author's italics.

state of embarrassment—perplext with doubts and surrounded by difficulties—in order to avoid error and to attain truth, to remove the jealousies which have infected society, and to restore that spirit of harmony and concord on which the prosperity of all depends, They deem it most eligible to address their Constituents on the momentous occasion. Therefore,

"Resolved, That a Committee be appointed to draft an address to the good people of the District, setting forth the principles and motives from which this Convention act; representing to them their true situation, urging the necessity of union, concord, and mutual concession, and solemnly calling upon them to furnish this Convention, at their next session, with instructions in what manner to proceed on the important subject to them submitted."[79]

This resolution seemed to satisfy all. No vote against it was recorded, and Marshall says it "may be considered as the last effort of the expiring faction which was made in this convention."[80] An address to Congress, in Wilkinson's magniloquent style, demanding the opening of the Mississippi, was then "twice read and agreed to." Next "Mr. Wilkinson, from the [special] committee to draft an address to the people," reported one which the Convention referred to the "committee of the whole convention."

To understand clearly Wilkinson's motives in what followed, let us see his own explanation of them to Miro. It makes pretty plain that his aim was not to detach Kentucky from the Union, as Marshall supposed, but only to convince Miro that he was aiming to do so—that he was the dominant political leader in Kentucky, and therefore could do so. Wilkinson wrote Miro:

"The last convention was legally elected, and met at Danville in the month of November. * * * Marshall and Muter had, in the mean time, been scattering distrusts and apprehensions calculated to do injury to our cause. It is evident, however, that it has acquired considerable force; but, in order to elicit an unequivocal proof of the dispositions of that assembly, I submitted to its examination my original memorial and the joint answer of yourself and Navarro. [This, of course, was audaciously false. Wilkinson pretended to read his original memorial, but really read a paper which did not disclose a single treasonable feature of the original.] I received, in the terms

[79] Post page, 102.

[80] Marshall's *Kentucky*, I, 330.

which you will find in the Gazette, No. 3, the unanimous thanks of that body, in token of its approbation of my conduct on that occasion.

"Some of our friends urged me to avail myself of this opportunity to revive the great question, but I thought that it was more judicious to indulge those who, for the moment, wish only that a new application be made in relation to the independence and separation of Kentucky from Virginia, and that a memorial be addressed to Congress on the necessity of obtaining the free use of the navigation of the Mississippi. I assented to these last propositions the more readily, that it was unanimously resolved [another daring fabrication!] that, should any of them be rejected, then the people would be invited to adopt all the measures necessary to secure for themselves a separate government from that of the United States, because it would have become evident that Congress had neither the will nor the power to satisfy their hopes. I determined therefore to wait for the effects which will result from the disappointment of those hopes, * * * The same effect will be produced by the suspension of the navigation of the Mississippi, which lies entirely in the power of Spain, and which must reduce this section of the country to misery and ruin; and as it has been stipulated that the operations of the Federal Government shall be uniform, the new Congress will have to lay taxes, without exception whatever, over the whole country submitted to its jurisdiction. The people here, not having the means of paying those taxes, will resist them, and the authority of the new government will be set at naught, which will produce a civil war, and result in the separation of the West from the East.

"This event is written in the book of destiny. But if, to produce it, we trust solely to the natural effect of political measures, we shall experience some delay. It is in the power of Spain, however, to precipitate its accomplishment by a judicious co-operation; and permit me here to illustrate the observations which I presented some time ago to yourself and Navarro. * * * In order to aid the favorable dispositions of Providence, to foment the suspicions and feelings of distrust already existing here, and inflame the animosity between the Eastern and Western States, Spain must resort to every artifice and other means which may be in her power * * * Every manifestation of the power of Spain and of the debility of the United States, every evidence of the resolution of the former to retain ex-

clusively for herself the right of navigation on the Mississippi, and every proof of the incapacity of the latter, will facilitate our views. Every circumstance also that will tend to impede our admission as an independent State will loosen the attachment of many individuals, increase the discontent of the people, and favor the execution of our plan. * * * The first treaty proposed by Gardoqui to Congress * * * I consider * * * as profoundly judicious, and I am of opinion that it ought to be renewed and vigorously carried on, until its objects be attained, cost what it may, because, besides that the proposed relinquishment of the right of navigating the Mississippi would immediately disrupt the Union, and separate for ever the West from the East, the sanction of the treaty by Congress would make our situation so truly desperate, that Great Britain would not venture to intervene in our favor, and all our hopes would rest on the liberality of Spain.

"Whilst this affair is pending, Spain ought to consider the navigation of the Mississippi as one of the most precious jewels of her crown * * * The grant of this boon ought to be looked upon as the price of our attachment and gratitude, and I beg leave to be permitted to repeat, that there must be known no instance of its being extended to any other than those [particularly Wilkinson] who understand and promote the interest of Spain in this part of the country * * * I flatter myself that, after the dangers I have run and the sacrifices which I have made, after having put my honor and my life in your hands, you can have no doubts of my favorable dispositions towards the interests of his Catholic Majesty, as long as my poor services shall be necessary."[81]

Having now seen Wilkinson's own account of his aims and acts in the convention, let us return to the minutes of its proceedings. After setting forth the adopted addresses to Congress and the Virginia Assembly, the minutes say, "Mr. Wilkinson from the [special] committee to draft an address to the people" reported one which the convention referred to "the Committee of the whole Convention." Thereupon "The Convention * * * resolved itself into a Committee of the whole to take into consideration the state of the district. Mr. Innes was elected to the chair." It was now for the first time that Wilkinson was not chairman of the committee of the whole.

[81] Gayerre's *Spanish Domination*, 227-234.

Evidently he left the chair to play the bold game of *finesse* by which, as we shall see, he fooled his fellow delegates and provided record evidence for Miro of his dominant influence in Kentucky and of his pretended pro-Spanish aims. It was doubtless while Innes was in the chair that Wilkinson pretended to read his Memorial, and called on Mr. Brown to state what he had learned at New York about Spain's attitude concerning the navigation of the Mississippi.

Marshall, assuming that he has already proven that Brown was Wilkinson's confederate in the alleged Spanish Conspiracy, assumes also that Wilkinson's call on Brown was prearranged between them. On the contrary, Brown was probably the most surprised man in the convention when thus suddenly called on to make a public statement of Gardoqui's overture. Mr. Madison had warned him that public "knowledge of it in Kentucky might, in the excitement there, be mischievously employed"; and that was certainly true, for it would have aroused a mighty demand for acceptance of Gardoqui's offer to open the Mississippi. Brown had no choice but to make some sort of reply to Wilkinson's call. To sit silent and refuse to make any would inevitably have created suspicion and brought on a virulent attack by the Marshall faction. On the other hand, in view of the disastrous consequences likely to follow a public disclosure of the overture, he naturally felt he was not at liberty to disclose it. In this dilemma he made a vague and evasive reply which was very differently reported by the Marshalls and their opponents. Even as reported by the Marshalls, the reply seems to have been only such as Brown's embarrassing situation called for, if he was *not* in collusion with Wilkinson; but one he would never have made *had there been* such collusion.

The only nearly contemporary written report of Brown's statement was given some months afterward in a letter of Colonel Thomas Marshall,[82] whose memory, he says himself, "is not very accurate." He reported Brown as saying "that he did not think himself at liberty to mention what passed in private conversation between himself and Don Gardoqui respecting us." Humphrey Marshall assumes that when Brown said he did not think himself at liberty to mention what passed between Gardoqui and himself, he did not mean that public knowledge of the overture might arouse the Kentucky people to demand its

[82] Copied post pages lxiv and lxv.

acceptance and make mischief, as Madison had warned him, but that he would be violating Gardoqui's confidence.[83]

After giving his recollection of Mr. Brown's statement declining to make Gardoqui's proposal public, Colonel Marshall adds: "but this much he would venture to inform us, that provided we were united in our councils, every thing we could wish for was within our reach."[84] This language also both the Marshalls construe most unfairly. Brown and many others had openly favored separation from Virginia, without again asking for her already expressed consent, but he had just before offered his resolution for admission into the Union. He recommended separation from Virginia, but expressed sanguine hopes for the Union in his letter to Muter. Like others, he evidently believed that when separated from Virginia, Kentucky could more quickly and certainly gain admission to the Union. This, in all probability, was true, notwithstanding the legal obstacles set forth by Marshall, who assumes that Virginia and Congress would have refused to recognize Kentucky as a new state, and would have used force to drive it back into Virginia. There is little to warrant this assumption. In their impoverished condition neither Congress nor Virginia could well have undertaken such compulsion, nor could either have effected it. Congress, we may be sure, would much rather have admitted Kentucky into the Union than left her out of it to be courted by Great Britain and Spain; for the loss of Kentucky would probably have involved the loss of the whole western country, including the valuable public lands of the Northwest Territory.

In advocating immediate separation from Virginia, therefore, Mr. Brown and those who agreed with him had much reason to believe that—once admitted to the Union, with a vote equal to any other state's—Kentucky's representatives in Congress could have secured fair consideration of her rights to navigation and protection from

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[83] Marshall's *Kentucky*, I, 319. Thomas Marshall's language was: "He told us that he did not think himself at liberty to *mention* [Humphrey substitutes "disclose"] what had passed in private *conversation* [Humphrey substitutes "conferences"] between himself and Don Gardoqui respecting us [Humphrey substitutes "between the Spanish minister and himself" and omits "respecting us"], but this much [here Humphrey inserts "in general"] he would venture to inform us [here Humphrey substitutes "the convention"] that, provided we were united in our councils [Humphrey substitutes "unanimous"], etc. Humphrey, who was not in the convention, evidently had Colonel Marshall's language before him when he *quoted* Brown; and this is the way he did so in his history.

[84] Green's *Spanish Conspiracy*, 251.

Indian invasion. This seems to be what he meant when (according to Colonel Marshall), after evading Wilkinson's call to state what passed with Gardoqui, he said he would venture to say that "provided we were united in our councils, every thing we could wish for was within our reach." Yet Colonel Marshall in his letter (which does not mention Brown's resolution for admission to the Union), after stating his recollection of Brown's remark, adds this very strained construction of it: "meaning, as it fully appeared to me, that if we would assume government and *declare separate from the Union*, Spain would give us every *indulgence* we could ask for." This inference was unwarranted by what Colonel Marshall himself states that Brown said.

Wilkinson's ingenious manipulation of the convention was again shown on the last day of its session, when it "Resolved, That this Convention highly approved the Address ["Memorial"] presented by Gen'l James Wilkinson to the Governor and Intendent of Louisiana, and that the president be requested to present him the thanks of the Convention for the regard which he therein manifested for the Interest of the Western Country"! This resolution was passed without a single vote being recorded against it, and it was well calculated to convince Miro of the artful schemer's dominant influence in Kentucky. No doubt at Wilkinson's suggestion, the convention also ordered "that the * * * *Kentucky Gazette* be requested to publish the proceedings of this Convention" and, as we have seen, he promptly sent Miro a copy of the *Gazette*.

Thus Miro received apparently incontestible proof that Wilkinson had read his Memorial to the convention; that the convention had been fully informed of their plot to detach Kentucky from the Union; that it had "laid on the table" Brown's resolution declaring "the wish and interest" of the people to have Kentucky made a "member of the Federal Union," and instead had adopted Wilkinson's resolution calling for popular instructions and another convention—all apparently without a dissenting vote. Finally, Miro saw from the convention minutes in the *Gazette* that, without a single recorded dissent, the convention highly approved the Memorial, and thanked the traitor for his "regard * * * for the interest of the Western Country," as expressed therein. Miro was a shrewd and none too scrupulous Spaniard, but we can hardly wonder that he was deceived into believing Wilkinson was really working to carry Kentucky out of the Union and "into the arms of Spain"; or that he looked to see

this result soon brought about; or that he continued the schemer's exclusive trade privilege to hasten that result; or that he soon afterward recommended advancing him $18,700, as the first installment of annual bribe-money to corrupt twenty-two of the district's leading men, and induce them to aid the secession scheme.

Some three months after the November convention, Colonel Thomas Marshall wrote the letter already mentioned. It was addressed to Washington and gave an account of Wilkinson's reading of his pretended Memorial, of Brown's statement to the convention, and of his own interpretation of it, which is copied in the footnote below.[85] Then Colonel Marshall says that, about the time of that convention, Colonel Connolly, the British agent, approached him with an overture strikingly like Gardoqui's to Brown. Of this overture he said:

"About this time arrived from Canada the famous Doctor (now Colonel) Connolly; his ostensible business was to inquire after, and

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[85] "Fayette County, 12th February, 1789.

"Dear General:

"The nature of the subject upon which I do myself the honor to address you, will I hope be admitted as an excuse for the trouble you will have in reading this letter. The political situation of this western country appears to me to be some thing critical, and therefore I have undertaken, although reluctantly, to give you a state of facts preceding our present situation, so far as they have fallen within my knowledge.

"In the spring, 1787, General Wilkinson went to New Orleans with a cargo of tobacco, etc., and was requested by the governor of that place to give his sentiments freely, in writing, respecting the political interest of Spain and the Americans of the United States inhabiting the western waters. This he did in an essay, as he calls it, contained in about 15 or 20 sheets of paper. I saw the governor's letter to him acknowledging the receipt of it, and informing him that he would lay it before the king of Spain; a copy of this essay he produced and read in our late convention held for the district; and as well as my memory (which I acknowledge is not very accurate) serves me, the substance of it is as follows:

"He urges our natural right of following the current of the rivers flowing through our country into the sea. He states the extent of our country, the richness of our soil, abounding choice productions proper for foreign markets, to which we have no means of conveying them, should the Mississippi be shut up against us. He states the advantages Spain might derive from allowing us the free use of that river. He goes on to show the rapid population of this country, and the eagerness with which every individual looks forward to that navigation. He states the general abhorrence with which the people of the western waters received the intelligence that Congress was about to sacrifice their dearest interest by ceding to Spain the navigation of the Mississippi for twenty or thirty years, and represents it as a fact that they are on the point of separating themselves totally from the Union on that account.

"He addresses himself to their fears by a pompous display of our force, and urges that should Spain be so blind to her true interest as to refuse us an amicable participation in the navigation of that river, and thereby force us into violent

re-possess himself of, some lands he formerly held at the Falls of Ohio; but I believe his real business was to sound the disposition of the leading men of this district respecting this Spanish business. He knew that both Colonel Muter and myself had given it all the opposition in convention we were able to do, and before he left the district, paid us a visit, though neither of us had the honor of the least acquaintance with him.

"He was introduced by Colonel John Campbell, formerly a prisoner taken by the Indians, and confined in Canada, who previously informed us of the proposition he was about to make. He (Connolly) presently entered upon his subject, urged the great importance the navigation of the Mississippi must be of to the inhabitants of the Western waters, shewed the absolute necessity of our possessing it,

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measures, 'Great Britain stands with her arms expanded ready to receive us,' and assist our efforts for the accomplishment of that object, and quotes a conversation he had a few years ago with a member of the British Parliament to that effect. He states the facility with which their province of Louisiana might be invaded by the united forces of the British and Americans, by means of the river Illinois, and the practicability of proceeding from thence to their province of New Mexico, it not being more than twenty days. Britain, he says, will in that case aim at the possession of Louisiana and New Orleans for herself, and leave the freedom of the navigation to America; and urges pretty forcibly the great danger the Spanish interest in North America would be in from the British power, should that nation possess herself of the mouth of the Mississippi, and thereby hold the two grand portals of North America—that river and the St. Lawrence; and concludes with an apology for the freedom with which he has treated the subject; and adds, that it has at their own particular request been drawn from a man 'whose head may err, but whose heart can not deceive.'

"This essay, I am told, has been laid before the Court of Madrid; and as a violent separation from the United States seems to be laid down as the ground work upon which every other consequence depends, I think it probably has produced instructions from that Court to the Spanish resident at Congress, that if the Western country should declare itself separate from the Union, to avail himself of that event. I found this conjecture upon Mr. Brown's confidential letters from Congress to his friends in this district; some of those letters I have seen.

"He mentions that in a private conversation, which he had with Don Gardoqui, he was informed that so long as this country remained a part of the Union, we had nothing to expect from Spain, but were we to declare ourselves separate from, and independent of, the United States, he was authorized to treat with us respecting commerce and the navigation of the Mississippi.

"Mr. Brown, having returned from Congress, was called upon in Convention in November last, to give such information respecting our affairs in Congress as might be proper for us to know. He told us that he did not think himself at liberty to mention what passed in private conversation between himself and Don Gardoqui respecting us; but this much he would venture to inform us, that provided we were united in our councils, every thing we could wish for was within our reach;—meaning, as it appeared fully to me, that if we would assume government and declare separation from the Union, Spain would give us every indulgence we could ask for." (Green's *Spanish Conspiracy*, 250-251.) The rest of the letter is quoted in the text.

and concluded with assurances that were we disposed to assert our right respecting that navigation, Lord Dorchester was cordially disposed to give us powerful assistance, that his Lordship had (I think he said) four thousand British troops in Canada, beside two regiments at Detroit, and could furnish us with arms, ammunition, clothing and money; that, with this assistance, we might possess ourselves of New Orleans, fortify the Balize at the mouth of the river, and keep possession in spite of the utmost efforts of Spain to the contrary. He made very confident professions of Lord Dorchester's wishes to cultivate the most friendly intercourse with the people of this country, and of his own desire to become serviceable to us, and with so much seeming sincerity, that had I not before been acquainted with his character as a man of intrigue and artful address, I should in all probability have given him my confidence.

"I told him that the minds of the people of this country were so strongly prejudiced against the British, not only from circumstances attending the late war, but from a persuasion that the Indians were at this time stimulated by them against us, and that so long as those savages continued to commit such horrid cruelties on our defenceless frontiers, and were received as friends and allies by the British at Detroit, it would be impossible for them to be convinced of the sincerity of Lord Dorchester's offers, let his professions be ever so strong; and that, if his Lordship would have us believe him really disposed to be our friend, he must begin by shewing his disapprobation of the ravages of the Indians.

"He admitted of the justice of my observation, and said he had urged the same to his Lordship before he left Canada. He denied that the Indians are stimulated against us by the British, and says Lord Dorchester observed that the Indians are free and independent nations, and have a right to make peace or war as they think fit, and that he could not with propriety interfere. He promised, however, on his return to Canada to repeat his arguments to his Lordship on the subject, and hopes, he says, to succeed. At taking his leave he begged very politely the favor of our correspondence; we both promised him, provided he would begin it, and devise a means of carrying it on. He did not tell me he was authorized by Lord Dorchester to make us these offers in his name, nor did I ask him; but General Scott informs me that he told him that his Lordship had authorized him to use his name in this business.

"It appears plain to me that the offers of Lord Dorchester, as well as those of Spain, are founded on a supposition that it is a fact that we are about to separate from the Union; else, why are those offers not made to Congress? We shall, I fear, never be safe from the machinations of our enemies, as well internal as external, until we have a separate state, and are admitted into the Union as a federal member. I have the honor to be, with the most respectful esteem and regard, your most obedient and very humble servant,

"T. MARSHALL."[86]

For the purpose of this introduction, the significance warranting this long quotation does not lie in the importance of Connolly's overture, nor in Colonel Marshall's conduct with reference to it, but in the strong contrast between the laudatory interpretation which Humphrey Marshall's history puts on Colonel Marshall's reception and communication of Connolly's overture for Great Britain, and the damning construction he puts on Mr. Brown's reception and communication of Gardoqui's very similar overture for Spain. With much exaggeration, Colonel Marshall is portrayed as an intimate and trusted friend of Washington, as a military hero of the Revolution, and as fighting a great conspiracy of nearly all the most highly honored men of Kentucky, under Wilkinson's leadership, to carry the district out of the Union and into the arms of Spain. On the other hand, Brown is portrayed as a traitor, and his conduct with reference to Gardoqui's overture offered as conclusive proof that he was one.

Only a morbidly suspicious enemy like Humphrey Marshall would find ground for imputing a treasonable motive to Colonel Marshall because he received Connolly's overture, or agreed to correspond with him about it, or waited over three months before communicating the fact of the overture to anyone, unless to some confidante. We do not for a moment doubt Colonel Marshall's entire loyalty, but the point to be observed is that the same kind of suspicion and hostile presumption of treasonable motives which Humphrey Marshall applies to Mr. Brown's conduct with reference to Gardoqui's overture, if applied to Colonel Marshall's, might quite as well convict him of aims almost identical with those charged against Mr. Brown. Indeed, if Humphrey Marshall himself was informed

[86] Green's *Spanish Conspiracy*, 251, 252.

of Connolly's overture, his own method of convicting Brown of treason would as well convict himself.

If Mr. Brown, having letters from McDowell and Muter "requesting whatever information" he had relative to navigation negotiations with Gardoqui, was presumably guilty of treasonable motives when he conversed with Gardoqui on that subject, it would be interesting to see what an enemy of Colonel Marshall, using his son-in-law's cunning kind of reasoning, would say of the Colonel's reception of Connolly's visit when "previously informed * * * of the proposition he was about to make." If Brown's disloyalty was indicated by receiving Gardoqui's overture, without one word of approval, and merely with the remark that he would reflect on it and talk with him about it later, what could not an enemy like Humphrey Marshall say of Colonel Marshall's receiving Connolly's foreknown proposition and agreeing to correspond with him about it? If Mr. Brown was proven guilty because he kept Gardoqui's overture secret from the public, and only informed Colonel McDowell and Judge Muter of it, a malignant enemy might demand to know why Colonel Marshall told no one of Connolly's proposition (except, perhaps, Humphrey) until over three months later, and then, in a letter reflecting on Brown's loyalty in respect to Gardoqui's very similar proposal. It is an axiom of justice that no man should be *presumed* guilty; but Humphrey Marshall not only presumes the guilt of all who opposed him, but denies the presumption of innocence even to those who co-operated with him, like Muter, whenever they said or did anything favorable to the other side. Political opposition to him he made treason to the nation.

We have now discussed the so-called Spanish Conspiracy controversy until its culmination in the convention of November, 1788, and shall pass more rapidly over its much less important aftermath.

Wilkinson soon became deeply involved financially by mishaps in his New Orleans trading venture and land speculations. He then turned his attention to military affairs, became generally engaged as an officer in the United States Army in the Northwest Territory, and took decreasing and comparatively small part in Kentucky politics. Referring to the April, 1789, election of delegates to another (seventh) convention, Marshall says Wilkinson was not a candidate, "for,

either engrossed by his pecuniary speculations at home and abroad, which left him no time for politics, or, convinced by the experience of the last year and current observation, that the time and occurrences were inauspicious to his purposes, he professed to be disgusted with political life, and confined himself to the management of his own affairs—which were extensive, complicated, and embarrassed."[87]

Meantime, political distinction continued to be conferred on the other men who had incurred Marshall's enmity, and his book shows that his hatred of them grew with their preferment. President Washington in 1789 appointed Innes Judge of the United States District Court for Kentucky, and Mr. Brown was made United States senator by Virginia. From that time they became the special objects of Marshall's attacks. Judges Muter, Wallace, and Sebastian were also promoted, being made Judges of the Court of Appeals of Kentucky. In 1792 Kentucky was admitted into the Union, and Mr. Brown and Mr. Edwards were chosen for the new

[87] Marshall's *History of Kentucky*, I, 347. For years afterward Wilkinson continued his dealings with Miro and the latter's successor, Carondelet, and received his Spanish pension, but hardly pretended to either of them, as he had previously done, that he was about to detach Kentucky from the Union. Soon he was making excuses to Miro for not accomplishing more. He had represented nearly all the "notables of Kentucky" as his confederates, and both them and his opponents, including Marshall, as bribable, but in his letter of February, 1789, to Miro he confessed that he "had opened myself only to the Attorney General Innis, and to Colonel [Alexander Scott] Bullitt, who favor our designs, and indirectly I had sounded others, whom I also found well disposed to adopt my ideas." (Gayerre's *History of Louisiana, Spanish Domination*, 224.) Early in January the next year he wrote Miro: "The general permission to export the products of this country through the Mississippi river, on paying a duty of 15 per cent., has worked the consequences which I feared, because, every motive of discontent having thus been removed, the political agitation has subsided, and to-day there is not one word said about separation. Nor are the effects produced by this pernicious system less fatal in relation to our plan of fostering emigration to Louisiana. Every year, the inhabitants and landholders of these parts had ever present to their minds the terrible prospect of seeing their produce perish in their hands for want of a market, but now they no longer have any such apprehensions on account of the ready outlet they find at New Orleans for the fruits of their labor—which circumstance has diffused universal satisfaction in this district, &c * * * On my arrival here, I discovered a great change in those who had been so far our warmest friends. Many, who loudly repudiated all connection with the Union, now remain silent. I attribute this, either to the hope of promotion, or to the fear of punishment. According to my prognostic, Washington has begun to operate on the chief heads of this district. Innis has been appointed a federal judge with an annual salary of one thousand dollars; George Nicholas, district attorney; Samuel McDowell, son of the president of the Convention, and Marshall, have been appointed to offices. * * * I do not place much reliance on George Nicholas and Samuel McDowell. But I know that Harry Innis is friendly to Spain and hostile to Congress, and I am authorized to say that he would much prefer receiving a pension from New Orleans than from

state's first United States senators. Marshall's disgruntlement when he saw one after another of these highest civil stations filled by them may easily be seen "between the lines" in his history.[88] Most of them lived at or near Danville, the seat of government and the social centre of the district, and others of them were much there. Nearly all, except Wilkinson, were members of the Political Club, which had been formed in December, 1786, at Colonel McDowell's house, and was evidently an offense to Marshall. He had been black-balled when proposed for membership in the club, and he therefore looked upon it as a gathering of his enemies, and hence as a hotbed of conspiracy. In fact, the extant minutes of the club show there was no element of secrecy about it. It concerned itself only with the discussion of great public questions, and about some of these, such as slavery, its members showed a remarkably intelligent understanding, far in advance of the prevailing opinions of the time.[89]

New York. Should the King approve our design on this point, it will have to be broached with much delicacy, caution and judgement, &c. * * * And I fear that we can rely on a few only of my countrymen, if we cannot make use of liberal donations." (Gayerre's *History of Louisiana*, 277-278.) Miro, reporting to Valdes, wrote: "Although I thought with Wilkinson that the commercial concessions made to the Western people might deter them from effecting their separation from the United States, * * * yet I never imagined that the effects would be so sudden, and that the large number of influential men, whom Wilkinson, in his previous letters, had mentioned as having been gained over to our party, would have entirely vanished, as he now announces it, since he affirms *having no other aid at present than Sebastian.*

"I consider that I am exposed to err in expressing an opinion on the acts of a man, who works at six hundred leagues from this place, and who has undoubtedly rendered, and is still rendering services to his Majesty, as I have explained it in my other dispatches. But the great falling off which I observe in his last letter induces me to believe that, full of good will and zeal, and persuaded, from the experiences of past years, that he could bring round to his own opinions the chief men of Kentucky, he declared in anticipation that he had won over many of them, when he had never approached them on the main question. * * * Nevertheless, I am of opinion that said brigadier-general ought to be retained in the service of his Majesty, with an annual pension of two thousand dollars." (*Idem*, 285-286.)

Gayerre says: "Miro concludes his letter with recommending that a pension be granted to Sebastian, 'because I think it proper to treat with this individual, who will be able to enlighten men on the conduct of Wilkinson, and on what we have to expect from the plans of the said brigadier-general.'

"Thus every thing was done according to the most approved rules laid down in the code of corruption: 'set a thief to catch a thief, and a spy after another spy.' Thus Wilkinson was employed to watch the Kentuckians, and Sebastian to betray his confederate Wilkinson. Not a link wanting in the chain of infamy." (*Idem*, 286-287.)

[88] Marshall's *Kentucky*, I, 368.

[89] Speed's *Political Club*, Filson Club Publications.

Some time after Kentucky was made a separate state, Marshall's own turn came for political advancement. This was due to a great revulsion of popular feeling brought about by a decision of the Kentucky Court of Appeals concerning land titles. The decision was thought to endanger the titles of a very great number of persons who claimed their lands under the settlement and pre-emption laws of Virginia. Land had always been the main desire of Kentuckians and the main subject of speculation, trade, and personal controversy; and unfortunately, a very large part of the land titles of western Virginia and Kentucky were in an almost chaotic state.[90] The Virginia laws, which were adopted by Kentucky, provided that "those 'who * * * have actually settled on any waste, or unappropriated lands * * * to which no other hath a just or legal right or claim, shall be entitled to the pre-emption of any quantity of land, not exceeding four hundred acres, to include such settlement; and all those who * * * had marked out or chosen for themselves, any waste, or unappropriated lands, and built any house, or hut, or made other improvements thereon, shall also be entitled to the pre-emption of any quantity of land, not exceeding one thousand acres, to include such improvement.' Those claiming pre-emptions, for improvements, * * * were to present their several claims to the commissioners, for adjusting such claims; and if allowed, they were to be certified to the party, who, on lodging his certificate with the register, was to take out a warrant for the quantity of land mentioned—for which forty dollars per hundred acres, was paid."[91]

In the suit of Kenton against McConnell,[92] the Court of Appeals held the plaintiff's "settlement and pre-emption" claim of title was

[90] The seeds of this confusion were sown with Virginia's earliest grants of lands in an unexplored wilderness, made by royal authority to colonizing syndicates, or to soldiers for military service. Most of the grants were "blanket" ones, calling for so many thousands of acres to be located afterward in some vaguely described region. In view of the future trouble they caused, these blanket grants have sometimes been characterized as blind folly; yet they were often the only available means for securing soldiers and supplies to carry on war to hold the wilderness country against the French and Indians. Even later, accurate surveys were impracticable. They were usually made along rivers and creeks, even the names and courses of which were often uncertain. Furthermore, the surveyors were often incompetent or negligent, used chains of varying length, and made their surveys overlap previous ones. This led to numberless land suits and bred a great crop of lawyers whose main business was to find and take advantage of title defects. Marshall was reputed to be one of them. Collins' *Kentucky*, II, 249.

[91] Marshall's *Kentucky*, I, 87.

[92] Hughes' *Reports*, Kentucky Court of Appeals, 257, etc.

legally bad. The question was a highly technical one, depending on whether the previous finding of a land commission upholding the claim was reviewable by the Court of Appeals. Chief Justice Muter and Judge Sebastian concurred in holding that the Court of Appeals was not bound by the finding of the Commission. Judge Wallace dissented, upholding the pre-emptioner's claim. The numerous "settlement and pre-emption" land claimants were told that this decision by Muter and Sebastian invalidated their titles. However unreasonably, they were naturally incensed against the two judges, and the legislature was in sympathy with them. In fact, probably most of the legislators themselves had such titles. Marshall himself was a member, and he instigated proceedings in the House of Representatives to remove from office the two judges who had decided against the settlement and pre-emption claims! In his history he says:

"As the court's decision would prostrate a very numerous class of the settlement and pre-emption claims, then considered not only legal but meritorious, * * * the public mind was * * * considerably agitated. An address in the nature of a memorial and remonstrance to the general assembly [evidently his own] * * * brought the subject before the house of representatives * * * whereupon it was resolved to summon the two judges, of whom complaint was made. * * * They promptly replied by letter * * * that the legality of an adjudication of the court of appeals, or an opinion of a judge thereof in any cause, could not be properly or constitutionally examinable by a single branch of the legislature; and a formal protest was made against any attempt of a single branch of the general assembly to revise the decisions of the supreme court. They say that justice to the judge, and the independence of the court, demand that they be proceeded against according to the mode of trial prescribed in the constitution * * * and * * * that they will hold themselves in readiness to answer any specific charge which may be brought forward against them in the manner the constitution prescribes, at any time whatever."[93]

Marshall was a lawyer, and must have known that this stand of the two judges was legally right and entirely proper; but he moved the adoption of a resolution declaring their decision "contrary to the plain letter, intent, and meaning" of the law; that it caused "a well

[93] Marshall's *Kentucky*, II, 162, 208, 210.

grounded apprehension" that the two judges who concurred in it "are altogether destitute of that judgment, integrity, and firmness which are essential in every judge"; that "there is no security for property so long as the said George Muter and Benjamin Sebastian continue as judges of the Court of Appeals"; that they "therefore * * * ought to be removed"; and that a committee of the two houses "prepare an address to the governor for that purpose."[94]

That there was ground for honest difference of opinion between the judges about the technical question involved in the suit, anyone may see who will read the report of the case.[95] Judge Wallace, the judge whom at other times Marshall denounced as a traitor, now escapes his attack; but Judge Muter, whom we have seen him lauding as "an honest man," and "true-hearted citizen," the resolution describes as "destitute of * * * integrity."

Although Marshall's resolution failed by one vote, the senate passed another one declaring that the Muter and Sebastian decision was "contrary to the plain meaning and intent of the law," and "we believe, from what appears at this time, proceeded from a want of knowledge of the law, or some improper motives that appear to discover a want of integrity."

It was by this legislature, incensed by the Court's decision against pre-emptioners, that Humphrey Marshall was elected United States senator to fill the place of Senator Edwards, resigned. Upon a rehearing of the Kenton-McConnell suit, Judge Muter weakly changed his opinion, the temporary excitement over settlement and pre-emption land titles passed away, and Marshall's opponents soon regained complete political ascendancy in Kentucky.

The next onslaught in his history Marshall directed against what he calls the "Jefferson-French" party, which embraced not only the special enemies he had made in Kentucky, but the Jeffersonian Republicans at large. He says "an overwhelming majority" of the Kentucky people were of this Jefferson-French party, which he viciously attacks as a treasonable one. Jefferson he represents as the

[94] Marshall's *Kentucky*, II, 165, gives the resolution in full and Marshall's labored and disingenuous contention in support of it. The governor had no such power, except in the mode provided by the state constitution, and this Marshall must have known.

[95] Hughes' *Kentucky Reports*.

head of an "intrigue in favor of France,"[96] reluctant to prosecute Judge Innes for treasonable conspiracy. He says in Jefferson's "heart there was a perfect amnesty for all such crimes, if not for treason itself, when perpetrated by a devoted admirer of himself and a party coadjutor; and such the delinquent judge was estimated." Marshall represents the Jefferson-French party in Kentucky as treasonably conspiring to invade Louisiana and overthrow Spain's rule there; yet, with characteristic inconsistency, he represents a fictitious *pro-Spanish* party—Innes, Brown, Shelby, and all—as combining with the Jefferson-French party to oust the Spaniards from Louisiana! In truth there never was any such "Spanish party" in Kentucky, even before it was admitted into the Union in 1792; and thereafter certainly there was nothing but enmity toward Spain for closing the Mississippi. But Marshall (evidently to preserve the continued existence of an alleged Spanish Conspiracy and give color to a charge he would afterward make that Innes and Nicholas in later years attempted to effect its purpose) asserts there was a "small but persevering band like moles working in the dark" to promote an alliance with Spain, but "joining the Jefferson faction the more effectually * * * to identify themselves with the infatuated multitude."[97]

Few episodes in the history of the Revolutionary West have been more grossly distorted than the projected movement of the western Americans to liberate the Louisiana French from Spanish rule. When by the French Revolution the people of France overthrew their monarchy and declared popular rule, "the national sympathy of America went out to France as a friend, ally, and sister republic * * * struggling against tyranny." Grateful for her aid during the Revolution, and greatly pleased to see the extending influence of America's pioneer example in free government, an overwhelming majority in this country were for aiding France, then fighting against nearly all the great monarchies of Europe. Many, indeed, thought we were bound by treaty to do so. When Spain joined these enemies of France, and war between the United States and Spain seemed imminent, "Democratic societies," eastern and western, clamored for it. Our French friends of Louisiana longed to throw off the galling yoke of Spain, and our western people were

[96] Marshall's *Kentucky*, II, 383; also 114, 116, 205, 341, 400.

[97] Marshall's *Kentucky*, II, 188.

fired with desire to help them, never doubting that a French republic there would gladly open the Mississippi.

At this juncture there arrived in this country the French revolutionist, Genet, who had been sent by the Republic of France as minister to the United States. He was received with wild enthusiasm at Charleston, and thence made a triumphal progress to Philadelphia, where he was welcomed with bonfires and fêtes. Intoxicated by these popular demonstrations, he conducted himself much as if this country and his own were already allies in the war. He issued letters of marque for vessels to leave American ports to attack France's enemies; and gave General Clark a commission to raise troops to aid the French revolutionists of Louisiana. There is no sort of doubt that nearly all Republicans in Kentucky wished this movement well. Many joined it—far more were ready to join it—and had Genet promptly supported Clark with promised funds, it seems almost certain that Spain's rule in Louisiana would have been quickly ended, for her force there was small, ill-supplied, and alarmed, the French many and ardent. But Genet could not procure and furnish the funds needed; time was thus lost; a proclamation of neutrality was issued by President Washington, and thereupon the expedition was prohibited and promptly abandoned.[98]

As Spain and the United States were not at war, the expedition would undoubtedly have been legally unjustifiable; but it would be absurd to impute disloyal motives to the men engaged in it or encouraging it, as Marshall does. We do not brand as traitors the men who went to free Texas from the rule of Mexico, or Cuba from the rule of Spain, or American volunteers in the World War against Germany, when those powers were at peace with us. However illegal may have been the projected invasion of Louisiana, the liberal and humane motives of the westerners engaged in it are beyond question. They considered it a stroke for liberty—a blow to end despotism in the Mississippi Valley. They saw their French friends and many American settlers in Louisiana, making perhaps five sixths

[98] One has only to read the papers of officials and people in Louisiana and in our western country to see that had Genet's promised support been given, the expedition would in all probability have ended the Spanish dominion. Had that object been attained, the American liberators would today undoubtedly be lauded like those who freed Texas of Mexican rule, and gratefully remembered by the people of Louisiana. Yet the success of the expedition would have prevented the Louisiana Purchase and probably confined the United States east of the Mississippi.

of its population, longing for freedom, but held in subjection by Spanish troops and ruled by Spanish officials; they saw their own vital right to navigate the Mississippi haughtily denied them by Spain; they believed, and had much reason to believe, that their country was about to join France in war with Spain; and that war they looked upon as a most holy one. They could not doubt that Louisiana under a French republic would be a far more congenial neighbor than under the hard, selfish, and bigoted rule of a Spanish king; and no American then dreamt of Louisiana becoming a part of the United States, or could foresee that in a few years the Republic of France would be supplanted by the despotism of Napoleon.

No attempt will be made to follow Marshall's confusing and cunning arguments to misrepresent the projected movement for the liberation of Louisiana as a treasonable conspiracy against the federal government. It must suffice to say that he describes those who took open part in it as filibustering freebooters. Others, like Governor Shelby, who took no such part, but looked with favor on the expedition and did nothing to check it, Marshall represents as conspirators traitorously aiming to "rule or ruin the country."

After disastrous campaigns against the northwestern Indians by Colonel Harmar (1790) and General St. Clair (1791), a minor victory at Eel River was won by Wilkinson, who had been appointed a lieutenant-colonel in the federal army by President Washington, and was soon afterward made a brigadier-general. The first appointment was made on the recommendation of Colonel Thomas Marshall. Humphrey Marshall says that when it became known to the public, Colonel Marshall "incurred some degree of censure, which drew from him the following explanation: 'He considered, Wilkinson, well qualified for the commission he had solicited, and obtained; that while he remained unemployed by government, he considered him dangerous to the public quiet of Kentucky, perhaps to her safety—that if his commission did not secure his fidelity, it would at least place him under control, in the midst of faithful officers, whose vigilance would render him harmless, if it did not make him honest. * * * At all events,' he said, 'he could see no good reason, for not putting the lion, in the toils, which he solicited for himself.' "[99]

[99] Marshall's *Kentucky*, I, 389-390.

Knowing that Colonel Marshall was unquestionably an honorable and patriotic man, one can hardly believe he ever gave any such explanation, for it is inconceivable that he would have recommended Wilkinson as "qualified for the commission" if he did not believe him qualified by *loyalty* as well as by mere military capacity. Although the explanation as given by Humphrey Marshall purports to be *quoted*, it reads much more like his own than Colonel Marshall's. Which it was is left for decision to the reader, who will probably trust Colonel Marshall's honor rather than the historian's accuracy.[100]

Passing over a great number of misleading assumptions and assertions of comparatively little importance, we come now to Marshall's charge that an overture from the new Spanish governor at New Orleans, Carondelet, looking to Kentucky's secession from the Union and alliance with Spain, was received and favorably entertained by Judge Innes and Colonel Nicholas. Before presenting this charge, Marshall pursues his usual confusing but shrewd method of preparing his readers to accept the damning interpretation he will put on such documents and circumstances as he will afterwards bring forth to convict his opponents. Thus we have just seen him asserting the continued existence of a wholly fictitious "Spanish party," "like moles working in the dark" for a friendly alliance with Spain, at the very time when he was representing them as co-operating with the "Jefferson-French" to send an expedition to *overthrow* Spain's government in Louisiana. This he evidently did to give color to this new charge that Innes and Nicholas, when afterwards receiving Carondelet's overture, were only carrying out the old aims of the alleged pro-Spanish party.

Carondelet made two overtures, one in 1795, the other in 1797. Let us see the situation when the first one was made.

During six years, from the end of the Revolution to the establishment of the new federal government in 1788, the western people had waited on the weak Continental Congress to enforce their right to navigate the Mississippi, and they had met only disappointment.

[100] Although Colonel Marshall's "explanation" purports to be *quoted* by Humphrey Marshall, it is not given in the first person, but in the third—not "*I* considered," but "*he* considered," etc.

For some ensuing years the new government could do little for them, for it was engrossed with difficult problems of organization, finance, foreign relations, and Indian war. But during that period, owing to the new taxing power provided by the Constitution, the financial condition of the United States was revolutionized. For the first time there existed a solvent federal government able to pay and feed a strong army in the field.[101] The great majority of the people, west as well as east, were well disposed to the federal government. Colonel Thomas Marshall had declared the Kentucky people were. The leaders who had opposed the new constitution, unless it was amended to guarantee religious and other liberties, had been satisfied by the first ten amendments to that instrument. There was indeed a growing and bitter conflict between parties under it, but not opposition to it—much criticism of the way the federal government was administered, but virtually no disaffection toward the institution itself.

Naturally the Kentucky people expected the new and stronger government to restrain its Indian subjects in the Northwest Territory, and enforce our right to the free navigation of the Mississippi; but they were too much concerned about their own dangers and needs to appreciate the difficulties encountered by the federal government. They saw savage raids from the federal territory, instead of decreasing, become more alarming. Their hope for the success of the expedition to liberate the Louisiana French and the Mississippi from Spain's control had been disappointed. Then came the revenue act of Congress and resistance by many western people of taxation by a federal government which they believed was doing almost nothing to protect their lives or rights. In Pennsylvania the

[101] Even when expeditions were ordered by the Continental Congress against the Indians, Kentucky militia and volunteers had been called to make the bulk of the armies. Nor was this all. They were taken into the enemy's country with no proper equipment of arms, ammunition, and clothing, or any adequate food supply. There are few sadder stories in American history than those told by the defeated Kentuckians of Harmar's and St. Clair's armies when they were left without food or ammunition in the northern wilderness to find their way home or die. It was mainly because Wayne's army in 1794-95 was properly supplied and paid with good money, that he was able to succeed where others had failed.

discontent culminated in the "Whisky War" of 1794. In Kentucky Colonel Thomas Marshall became chief revenue collector, and by doing so incurred great obloquy. He was "burned in effigy at Lexington"; "collectors were assaulted; some received insulting and abusive language; others had their papers destroyed, their horses' ears cropped, manes and tails close shaved, their saddles cut to pieces; and such was the general abuse that very few were found hardy enough to undertake the office."[102] Popular indignation in Kentucky and the west generally was at fever heat and was ominous.

During this time Washington's administration was earnestly endeavoring to induce Spain to open the Mississippi—a fact which was little understood in the west. In order to allay the belief in Kentucky that nothing was being done to secure their navigation right, Colonel James Innes was sent there to inform Governor Shelby of the state of the negotiations, and this he did early in 1795. The information at first seemed to awaken considerable hope that the river would be opened, but when more time passed with nothing accomplished, the hope soon vanished. In his address that year to the Legislature, Governor Shelby said he had received no "intelligence of the further progress or accomplishment of the treaty and that * * * there is, I fear, little reason to hope for a successful termination of that negotiation." The House of Delegates thereupon declared that the information received from Colonel Innes "affords no well grounded expectation that we shall shortly obtain that navigation," and instructed the Kentucky senators in Congress to take "effectual means to obtain information about the situation of the negotiations."[103]

Such was the situation when, in 1795, Carondelet, knowing the tense feeling amongst the Kentuckians and fearing they might invade Louisiana, in a letter to Sebastian offered to open the navigation of the Mississippi and let them trade with New Orleans on mutually advantageous terms to be arranged, but not specified. On receipt of this letter Sebastian wrote Judge Innes and Mr. Murray, saying

[102] Innes to W. Cary Nicholas, Library of Congress, *Innes Papers*, XIX.

[103] November 19, 1795. Library of Congress, *Innes Papers*, XXII, 66.

he had business of importance to communicate and asking them to meet him at Colonel Nicholas' residence. This they did, when he showed them Carondelet's letter, as follows:

"New Orleans, July 16, 1795.

"SIR:

"The confidence reposed in you by my predecessor, brigadier general Miro, and your former correspondence with him, have induced me to make a communication to you, highly interesting to the country in which you live, and to Louisiana.

"His majesty being willing to open the navigation of the Mississippi to the people of the western country, and being also desirous to establish certain regulations, reciprocally beneficial to the commerce of both countries, has ordered me to proceed on the business, and to effect in a way the most satisfactory to the people of the western country, his benevolent design.

"I have, therefore, made this communication to you, in expectation that you will procure agents to be chosen and fully empowered by the people of your country, to negociate with Colonel Gayoso on the subject, at New Madrid, whom I shall send there in October next, properly authorized for that purpose, with directions to continue in that place, or its vicinity, until the arrival of your agents.

"I am, by information [doubtless from Wilkinson or Sebastian], well acquainted with the character of some of the most respectable inhabitants of Kentucky, particularly of Innes, Nicholas, and Murray, to whom I wish you to communicate the purport of this address, and should you and those gentlemen think the object of it as important as I do, you will doubtless accede, without hesitation, to the proposition I have made of sending a delegation of your countrymen, sufficiently authorized to treat on a subject which so deeply involves the interest of both our countries.

"I remain with every esteem and regard, Sir,

"Your most obedient humble servant,

"THE BARON OF CARONDELET."[104]

Let us now see what Innes, Murray, and Nicholas did when this letter was shown them. As the welfare of the western country

[104] Street's *Report Select Committee * * * charging Sebastian, etc.*, Frankfort, 1806, 8. Also in *Mr. Rowan's Motion for Inquiry into Conduct of Harry Innis*, Washington, 1808, reproducing that report.

depended on the opening of Mississippi navigation, they were, of course, keenly anxious to learn the terms Carondelet would offer. Sebastian was undoubtedly his paid agent; but there is no scintilla of evidence that any of the others suspected this. Marshall assumes, but an impartial reader will not, that they were all traitors conspiring with one another and Sebastian to detach Kentucky from the Union. He does not even profess to offer evidence that, before receiving this communication, Nicholas or Murray were parties to any such conspiracy. The fact that Sebastian had dealings with the Spaniards was not learned until years afterwards, in 1806. Meantime he had borne an unspotted reputation as an upright citizen—at first a Baptist minister, then a lawyer of respectable, though narrow, technical learning, then a judge weak of will, but of integrity unsuspected until Marshall attacked him for his decision in the pre-emption suit of Kenton *vs.* McConnell.

What Innes, Murray, and Nicholas actually did when Sebastian showed them Carondelet's letter was fully explained by Judge Innes some nine years afterward. The signed reply they gave Sebastian to take to Gayoso has recently been found, and is now published, and corresponds perfectly with the account Innes then gave of it. In it they encouraged Carondelet to open the Mississippi, but pointed out that they had no authority whatever to send agents empowered to negotiate with him; and that only as individuals could they communicate with him, or Gayoso, on that subject. Nor did they indicate any intention or desire to have such negotiating agents empowered by the Kentucky people. Although expressing no threat, but rather using persuasive words, it is evident that a main purpose of their reply was to convey a warning to Carondelet that if he would not open the Mississippi, he would drive the western Americans to open it forcibly. They said that there was no longer hope of obtaining the navigation through the general government, but that it was indispensable for the western people, and impressed the Spaniard with the danger of war if the river were kept closed. Their reply, which was taken by Sebastian to Gayoso at New Madrid on the Mississippi below St. Louis, appears in full below.[105]

[105] "We consider it as essentially necessary to the interest of our country that the application made to Mr. Sebastian by letter from the Governor of New Orleans should be seriously attended to. We are induced to be of this opinion from a conviction that the navigation of the Mississippi is indispensibly requisite to the prosperity of the Western country, and that there is now no longer a hope of

On its face the proposal contained in Carondelet's letter to Sebastian was purely commercial; it said no word about Kentucky's separation from the Union. No doubt that was what he *designed* when suggesting the appointment of "agents * * * fully empowered by your people to negotiate * * * and properly authorized to treat"; but certainly Innes, Nicholas, and Murray had no intention of complying with the suggestion, else their reply would not have declared "the impossibility * * * of sending agents empowered to negotiate." Nor would they have said, as they did, that "there is no other mode in which communications can be made [than] by and to individuals"—manifestly meaning that the Kentucky people could not, and would not, send such agents empowered to negotiate.

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our obtaining it by the intervention of the general government. Situated as this country is, there is no other mode in which communications respecting this important subject can be made [except] by, and to individuals, and as we have been addressed by the Governor, we think we ought to meet his communications. It is therefore with our unanimous consent and desire that Messrs. Innes, Murray and Sebastian, or any one or more of them should go to New Madrid to meet Gov. Gayoso, to receive such communications as he may be disposed to make; to know in what manner and upon what terms His Catholic Majesty is disposed to open to us that navigation; to point out to him the impossibility, arising from our situation, of sending agents empowered to negotiate with him; that it is the most favorite object with the citizens of this country to be on friendly terms with His Catholic Majesty and his subjects, and to carry on a free commerce on terms of reciprocal advantage to both countries; that from the extent of our territory and the rapid increase of our population it will be impossible long to preserve peace unless we are permitted to enjoy that commerce; to make a true representation of the present population of the Western country and of its probable amount within a very few years; of the different articles of export which we can now furnish, of the quantity of each which could be exported at present, and of the increase of each kind which might be calculated on in a few years, if there was a certain prospect of a market for them; of the advantages that might be derived to both countries, should His Catholic Majesty make such regulations as should enable his American dominions to receive their necessary supplies from the Western, instead of the Eastern part, of the United States; and of the opportunity which now occurs of attaching the inhabitants of the Western country to His Catholic Majesty and his subjects, by voluntarily doing them that act of justice, which they no longer hope to be able to obtain by the aid of their own government.

"In testimony of our concurrence in everything above stated, we have hereunto affixed our signatures this 19th. day of November, 1795, in the State of Kentucky.

"G. NICHOLAS
HARRY INNES
WILLIAM MURRAY
BEN SEBASTIAN."

Innes, in a deposition before a legislative investigation in 1806, gave a correct account of the contents of the above reply to Carondelet, but the original document was furnished by Honorable Ben Johnson, M. C., to Colonel Stoddard Johnson for the latter's Kentucky history and was published (for the first time, it was said) in the *Louisville Evening Post*, October 12, 1901.

If Innes, Murray, and Nicholas had been conspiring to do what Carondelet suggested, they must have made his proposal public; for only in that way could they have got "agents, chosen and fully empowered by the people * * * to negociate with Col. Gayoso," and treat about terms. Had the proposal been thus made public, however, it could hardly have failed to awaken an instant and perhaps irresistible popular demand for acceptance of Carondelet's offer to open the Mississippi and the appointment of such agents to negotiate terms with him. Almost inevitably an intensely bitter factional conflict in Kentucky would have followed; and had the federal government then interfered, the Kentucky people might well have been so infuriated as to break away from the Union to gain the navigation.

Nothing, however, came of the overture. Sebastian afterwards said Gayoso insisted on import and export duties on Kentucky shipments to and from New Orleans, to which he objected; and that thereupon the two went to New Orleans to see Carondelet, who agreed with Sebastian, and said he would waive duties. Just after this Carondelet received news that a treaty had been made between the United States and Spain (November, 1795), providing for opening the Mississippi to American navigation, which, he said, "put an end to their business." This ended the whole affair so far as the Spaniards were concerned. The terms previously offered Sebastian by Gayoso at New Madrid, Sebastian said were reduced to writing by himself, and on his return to Kentucky the next year (1796), he showed the writing to Innes, who made and kept a copy. Although only Gayoso's abortive proposal, and never confirmed by Carondelet, it is given in full below.[106]

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[106] Gayoso's proposal as written by Sebastian: "His catholic majesty having taken into consideration the relative situation of his province of Louisiana and its dependencies, and that part of the United States of America lying west of the Apalachian mountains, and being of opinion that a commercial intercourse between the two countries will be productive of the harmony and reciprocal interest thereof, has been pleased to concede to the people of the said western country, during his pleasure, the following privileges:

"1. The people of the western country shall henceforth freely use, and exclusively enjoy, for the purpose of commerce, the navigation of the river Mississippi, and all the ports and places thereon, under the government of his catholic majesty, subject to the same regulations and restrictions, and no other, by which the commerce of the subjects of his catholic majesty is now governed. And whereas, the people of the said western country are now subject to the payment of six per centum ad valorem on all the produce of the said western country, imported into the government of Louisiana and its dependencies; and also to the

In view of the western excitement about the Mississippi and other causes of complaint, Nicholas, Innes, and Murray (if we do not presume, like Marshall, that they were traitors, but were loyal citizens) wisely withheld Carondelet's proposal from the public, when publicity could have accomplished no good purpose and might have caused disastrous results.

Our new treaty with Spain for the opening of the Mississippi, and another with Great Britain for the surrender by it of the northern lake posts, made the prospect seem bright for both unobstructed navigation and peace with the Indians. Two more years passed, however, and still the Mississippi remained closed; for Spain evaded performance of her treaty obligation to open it. Then, in 1797, a new excitement in the western country led Carondelet to make a final overture to detach it from the Union. This was the bitter conflict then going on between the Federalists and Jeffersonian Republicans. The western people were overwhelmingly Republicans, but John

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payment of the same duty on the exportation thereof; and his majesty being willing to remove every obstacle to that friendly intercourse which he is desirous to establish and maintain with the said western people, does hereby concede that the said western people shall hereafter be subject to the payment of duty of four per centum only, whether the produce imported be disposed of in the markets of Louisiana, or exported to foreign markets; and that the duty to be thus paid by the said western people shall be regulated by the valuation of their produce hereto annexed:

"2. That there may be no obstruction or impediment to the fullest and most advantageous enjoyment of the privileges hereby granted to the people of the said western country by his catholic majesty, such of the western people as may choose to reside in the government of Louisiana, for the purpose of carrying on commerce, shall henceforth be permitted to acquire, by purchase or otherwise, both real and personal property in any port on the said river Mississippi, or at any other place within the government of the said province of Louisiana and its dependencies, and shall be protected by the said government in the enjoyment thereof, the said residents being amenable during their residences to the same laws and regulations by which the subjects of the said province are governed; and, should the said residents, or any of them, die in the said province, or think proper to remove to the United States, or elsewhere, their property, both real and personal, shall, in the first case, be disposed of according to the will of the decedent, and, where no will has been made, shall descend to, and be distributed among the legal representatives of the deceased, agreeable to the laws of the said province, and in the last case, the removing resident shall have the liberty of disposing of the absolute estate, in the whole or any part of the property which he has either carried to, or acquired in the said province, and to transport the proceeds thereof free from duty to any part of the world.

"3. His catholic majesty, to evince to the said western people his disposition to encourage the commerce of their country, hereby permits them, when they cannot get a satisfactory market for their produce in the province of Louisiana or its dependencies, to export the same to the Havanna, or to any other port

Adams had become president, and to their minds he represented nearly everything abhorrent in a chief executive—monarchial and aristocratic political principles, pro-British and anti-French prejudice, and distrust of the people. Almost every act of his blundering administration incensed them. Their disgust and opposition grew to fury, and nullification seemed imminent when a federal Congress passed the odious Revenue, Alien, and Sedition Laws, and provided for raising a large army, which they believed was to be used to suppress their opposition and make them political slaves. The reasoning by which they justified their indignant protests will be found powerfully presented in the *Nicholas Letter*, and led to the passage of the famous "Kentucky and Virginia Resolutions of 1798," which were long glorified as a sort of Magna Charta of American democracy. These resolutions substantially declared a state's right to nullify and resist usurpation by the federal government of powers not delegated to it by the Constitution, but reserved to the states.

Whatever may be said of the grounds for believing that Adams' Federalist administration aimed to send an army into Kentucky to

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or place, either in the United States or Europe, and the said produce being exported to the Havanna, or to any of the said ports in the Spanish dominions, having paid the duty in the province of Louisiana, and the proprietor thereof taking from the proper officer in the said province, authentic documents of the payment, shall not again be subject to the payment of any duty in any port or place in the said Spanish dominion to which the said produce shall be exported; but the same may be disposed of in such port or place under the same rules and regulations which at present govern the disposal of the produce of Louisiana.

"4. To prevent any misconstruction, or improper use of the privileges hereby granted, it is explicitly declared that the importation of all articles of commerce, of what nature or description soever which are not actually the production of the said western country, is absolutely prohibited; and if any person shall hereafter attempt, under any pretext whatsoever, to introduce into the province of Louisiana or its dependencies, down the Mississippi, the products or manufactures of any other country (unless specially permitted by the government) the same are hereby declared to be contraband, and liable to seizure.

"5. As the commutation of the products of one country for those of another, is the foundation of commerce, his majesty, in order to establish that reciprocity of interest between his dominions and the said western country, without which no commercial intercourse can be permanent, will cause a preference to be always given in his markets to the products of the western country, and therefore expects that the people of the said western country, acting under the influence of the same principle, will, in the purchase of such articles of commerce as they may need, whether foreign or domestic, prefer his markets to any other. And, as a farther inducement thereto, his majesty, contrary to a long established rule of his government, does henceforth permit the people of the said western country to carry out of his dominions whatever money may remain to them after completing their purchase free from any duty or impost whatsoever." (*Louisville Evening Post*, October 12, 1901; *Mr. Rowan's Motion for An Inquiry into the Conduct of Harry Innis*, March 21, 1808; *City of Washington*, A. & C. Way, Printers, 1809, 21-24, embracing Street's *Report of the Select Committee, Supra.*)

enforce arbitrary and unconstitutional acts of Congress, there can be no question that the belief was general in the state. The fact was afterwards declared by many men of highest reputation there, including men who had not been involved in the party controversy on either side, and even by some who had been of the Marshall faction.[107]

Such was the state of intense excitement in Kentucky and the west generally, when, in 1797, Carondelet thought he saw an opportunity to detach them from the Union by a second overture. One Thomas Power claimed to be his agent to bear the overture, and again Sebastian was the intermediary. The new proposal was contained in an unaddressed writing, signed only by Power, bearing date of the nineteenth of July, 1797, and professing to state instructions received by him from Carondelet. These were that he should submit to Sebastian, Nicholas, Innes, and Murray, and "such other gentlemen as may be pointed out by them," proposals in substance as follows: That they should exert their influence to detach the inhabitants of "the western country" from the federal union and form a new government; that $100,000 would be paid to them, and additional compensation equal to the salaries they received from any offices they might lose by "taking an active part in endeavouring to effect a secession"; that Fort Massac on the lower Ohio should be garrisoned by the new western government with troops whom Spain would pay $100,000 and supply with guns and ammunition; that Louisiana's bounds should extend east of the Mississippi to a line drawn from the mouth of the Yazoo River in a general southeasterly direction, and that lands north of that line should "belong to the new government."

Power's full letter is given in the footnote.[108] It was taken by Sebastian to Judge Innes, who declared it a dangerous project which

[107] Library of Congress, *Innes Papers*, XXII.

[108] "His excellency the baron of Carondelet, commander in chief and governor of his catholic majesty's provinces of West Florida and Louisiana, having communications of importance, embracing the interests of said provinces, and at the same time deeply affecting those of Kentucky and the western country in general, to make to its inhabitants, through the medium of the influential characters in this country, and judging in the present uncertain and critical attitude of politics, highly imprudent and dangerous to lay them on paper, has expressly commissioned and authorized me to submit the following proposals to the consideration of Messrs. S. N. I. and M. and also of such other gentlemen as may be pointed out by them, and to receive from them their sentiments and determination on the subject.

"1. The above mentioned gentlemen are immediately to exert all their influence in impressing on the minds of the inhabitants of the western country a

ought not to be countenanced. Sebastian concurred in this opinion, but said a written answer was requested, and asked Innes to see Colonel Nicholas, saying that he himself would concur in anything they did. Judge Innes said he would see Colonel Nicholas, rode to his house, and showed him the Power writing. Colonel Nicholas thereupon wrote and both signed the following answer:

"SIR:

"We have seen the communication made by you to Mr. Sebastian. In answer thereto, we declare unequivocally, that we will not be concerned, either directly or indirectly, in any attempt that may be made to separate the western country from the United States. That whatever part we may at any time be induced to take in the politics of our country, that her welfare will be our only inducement, and

conviction of the necessity of their withdrawing and separating themselves from the federal union, and forming an independent government wholly unconnected with that of the Atlantic states. To prepare and dispose the people for such an event, it will be necessary that the most popular and eloquent writers in this state, should, in well timed publications, expose in the most striking point of view, the inconveniences and disadvantages that a longer connection with, and dependence on, the Atlantic states must inevitably draw upon them, and the great and innumerable difficulties in which they will probably be entangled if they do not speedily recede from the union; the benefits they will certainly reap from a secession, ought to be pointed out in the most forcible and powerful manner; and the danger of permitting the federal troops to take possession of the posts on the Mississippi, and thus forming a cordon of fortified places round them, must be particularly expatiated upon. In consideration of gentlemen devoting their time and talents to this object, his excellency, the Baron of Carondelet, will appropriate the sum of one hundred thousand dollars to their use, which shall be paid in draughts on the royal treasury at New Orleans; or if more convenient, shall be conveyed at the expense of his catholic majesty into this country, and held at their disposal. Moreover, should such persons as shall be instrumental in promoting the views of his catholic majesty, hold any public employment, and in consequence of taking an active part in endeavouring to effect a secession, shall lose their employment, a compensation equal at least to the emoluments of their office, shall be made to them by his catholic majesty, let their efforts be crowned with success, or terminate in disappointment.

"2. Immediately after the declaration of independence, fort Massac should be taken possession of by the troops of the new government, which shall be furnished by his catholic majesty without loss of time, with twenty field pieces with their carriages and every necessary appendage including powder, balls, &c. together with a number of small arms and ammunition, sufficient to equip the troops that it shall be judged expedient to raise. The whole to be transported at his expense to the already mentioned fort Massac. His catholic majesty will further supply the sum of one hundred thousand dollars for the raising and maintaining the said troops, which sum shall also be conveyed to and delivered at fort Massac.

"3. The northern boundary of his catholic majesty's provinces of east and west Florida shall be designated by a line commencing on the Mississippi at the mouth of the river Yazoo, extending due east to the river Confederation or Tombecbee; *Provided however*, that all his catholic majesty's forts, posts and set-

that we will never receive any pecuniary or other reward for any personal exertions made by us to promote that welfare.

"The free navigation of the Mississippi must always be the favourite object of the inhabitants of the western country; they cannot be contented without it; and will not be deprived of it longer than necessity shall compel them to submit to its being withheld from them.

"We flatter ourselves that everything respecting this important business will be set right by the governments of the two nations; but if this should not be the case, it appears to us that it must be the policy of Spain to encourage by every possible means the free intercourse with the inhabitants of the western country, as this will be the most efficient means to conciliate their good will, and to obtain with-

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tlements on the Confederation or Tombecbee, are included on the south of such a line, but should any of his majesty's forts, posts or settlements fall to the north of said line, then the northern boundary of his majesty's provinces of east and west Florida shall be designated by a line beginning at the same point on the Mississippi, and drawn in such a direction as to meet the river Confederation or Tombecbee, six miles to the north of the most northern Spanish fort, post or settlement on the said river. All the lands to the north of that line shall be considered as constituting a part of the territory of the new government, saving that small tract of land at the Chicasaw Bluffs on the eastern bank of the Mississippi, ceded to his majesty by the Chicasaw nation in a formal treaty, concluded on the spot in the year 1795, between his excellency Sr. Don Manual Gayoso De Lemos, governor of Natchez and Augliakabee, and some other Chicasaw chiefs; which tract of land his majesty reserves for himself. The eastern boundary of the Floridas shall be hereafter regulated.

"4. His catholic majesty will, in case the Indian nations south of the Ohio, should declare war or commit hostilities against the new government, not only join and assist it in repelling its enemies, but if said government shall at any future period esteem it necessary to reduce said Indian nations, extend its dominions over them and compel them to submit themselves to its constitution and laws, his majesty will heartily concur and co-operate with the new government in the most effectual manner in attaining this desirable end.

"5. His catholic majesty will not either directly or indirectly interfere in the framing of the constitution or laws which the new government shall think fit to adopt, nor will he at any time by any means whatever attempt to lessen the independence of the said government, or endeavour to acquire an undue influence in it, but will in the manner that shall hereafter be stipulated by treaty, defend and support it in preserving its independence.

"The preceding proposals are the outlines of a provisional treaty, which his excellency the baron of Carondelet is desirous of entering into with the inhabitants of the western country, the moment they shall be in a situation to treat for themselves. Should they not meet entirely with your approbation, and should you wish to make any alterations in, or additions to them, I shall on my return, if you think proper to communicate them to me, lay them before his excellency, who is animated with a sincere and ardent desire to foster the promising and rising infant country, and at the same time promote and fortify the interests of his beneficial royal master, in securing by a generous and disinterested conduct, the gratitude and affections of a just, sensible and enlightened people.

"The important and unexpected events that have taken place in Europe

out hazard, and at reduced prices, those supplies which are indispensibly necessary to the Spanish government, and its subjects."[108]

There could be no mistaking this flat refusal of Nicholas and Innes to be concerned in Carondelet's scheme, or to accept the "pecuniary reward" he offered. Even Marshall does not assert that they accepted a penny of the large bribe offered them by the unprincipled Spaniard, or his equally unprincipled agent, Power. He does, however, weave together many plainly unrelated and immaterial circumstances, and questionable assertions, to make Nicholas and Innes appear to have been secretly conspiring with Wilkinson, Sebastian, and Power to carry out Carondelet's scheme! It would double this already long introduction, however, to expose the disingenuousness and futility of these contentions; yet they can hardly deceive an intelligent and careful reader who is informed of the facts stated in these pages. As it was still tremendously important for the western people to get the Mississippi promptly opened, Colonel Nicholas evidently wrote the last two paragraphs of the reply to let Carondelet understand that Spain's safest policy would be to open it voluntarily, if she would avoid being forcibly compelled to open it.

Again he and Innes were confronted with the question whether they should or should not make this second Spanish overture public; and they wisely concluded not to do so. We have seen the good reason they had for not publishing Carondelet's previous overture;

since the ratification of the treaty concluded on the 27th. of October, 1795, between his catholic majesty and the United States of America, having convulsed the general system of politics in that quarter of the globe, and wherever its influence is extended, causing a collision of interests between nations formerly living in the most perfect union and harmony, and directing the political views of some states towards objects, the most remote from their former pursuits, but none being so completely unhinged and disjointed as the cabinet of Spain; it may be confidently asserted, without incurring the reproach of presumption, that his catholic majesty will not carry the above mentioned treaty into execution; nevertheless the thorough knowledge I have of the disposition of the Spanish government justifies me in saying that so far from its being his majesty's wish to exclude the inhabitants of this western country from the free navigation of the Mississippi, or withhold from them any of the benefits stipulated for them by the treaty, it is positively his intention, so soon as they shall put it in his power to treat with them, by declaring themselves independent of the federal government and establishing one of their own, to grant them privileges far more extensive, give them a decided preference over the Atlantic states in his commercial connections with them, and place them in a situation infinitely more advantageous, in every point of view, than that in which they would find themselves, were the treaty to be carried into effect.

"Signed.

"Louisville, 19th. July, 1797. THOMAS POWER."

[108] Street's *Report of Committee, supra.*

and there was perhaps even stronger reason for not making this one public. When the first was made, in 1796, few hoped to secure the opening of the Mississippi through the efforts of the federal government; but now there was a definite treaty with Spain to open it. Furthermore, as Great Britain had yielded up the lake posts, and no longer made trouble for us with the Indians, the United States was much freer to force Spain to carry out her treaty engagement to open the river. In view of these changed conditions there seems to have been a general expectation amongst the western people, as Nicholas and Innes said, that the navigation would "be set right by the governments of the two nations." Nothing, therefore, was to be gained by making Carondelet's second overture public. But the overwhelming majority of the western people were infuriated over the revenue, alien, and sedition laws, and nullification was imminent; and had Innes and Nicholas published Carondelet's offer to open the Mississippi it might well have brought about secession. At such a juncture publication of it would have been hardly less than a crime. Yet Marshall would have his readers believe that they secreted the fact of the overture because they were conspiring with Carondelet to detach Kentucky from the Union!

Although both of them thought it would be highly detrimental to the public interest to make Carondelet's two overtures public, we shall find that Colonel Nicholas communicated them freely to his friend Colonel James Morrison, a man of the highest character, whose loyalty to the Union was never questioned, even by Marshall. Furthermore, with the prompt approval of Colonel Nicholas, Colonel Morrison in 1798 freely communicated the fact of Carondelet's overture and its rejection to United States Senator James Ross, a strong Federalist, who had been disposed to suspect the Republican leaders in Kentucky, including Nicholas, of designing secession and alliance with Spain.[110]

[110] During a visit of Senator Ross to Kentucky, Colonel Morrison said: "Col. Nicholas had been endeavoring to convince him [Ross], by a lengthy and detailed account, of the causes which induced himself and others to condemn certain acts of the then administration." Colonel Morrison afterward testified that he "stated to him [Ross] that I believe the citizens of Kentucky were as firmly attached to the general government as those of any state in the union; and that as an evidence in support of that position I observed, that Col. Nicholas and some others equally suspected and obnoxious to the administration, and who were believed to be in the Spanish interest, or deeply disposed to insurrection, had convinced me that their intentions and views had been shamefully misrepresented, and in support of this opinion I then informed him of the rejection of Caronde-

If Nicholas and Innes were conspiring with Powers, they would presumably have had secret interviews with him, yet they never saw him. Powers himself so told Governor Randolph afterward, and completely exonerated them from complicity in Carondelet's scheme.[111] Mr. John Fowler, congressman from Kentucky and a man of high repute, knowing of Marshall's charge, wrote Innes: "In a conversation between Mr. Powers and myself on the subject of his mission to Kentucky, he observed, among other details, that Mr. Sebastian advised him to leave the country, that Nicholas and Innes were displeased with his project and might take measures to have him arrested."[112]

It was in 1798, three years after Spain had agreed to open the Mississippi, and when the revenue, alien, and sedition laws had almost driven the Kentucky people to actual nullification, and the famous

let's alluring proposition, with his 100,000 dollars; that on the same, or succeeding day, I stated to Col. Nicholas the substance of the conversation which I had with Mr. Ross, and of having communicated the proposition by the baron of Carondelet, &c. He replied that he was much pleased that I had done so, observing that he had only been prevented from making that gentleman acquainted with all the circumstances, from an idea that he might probably suppose he was solicitous of enhancing or raising himself in his opinion by a display of his patriotism and disinterestedness; but that now Mr. Ross, (a senator in congress of the United States, and known to be highly in the confidence of the executive) was in possession of the facts, and would no doubt make them known, which relieved him of great solicitude, and he was conscious it would be highly gratifying to judge Innes, that the executive would gain the information through a channel that could not be questioned, and would no doubt keep a watchful eye over our Spanish neighbors.

"It may not be improper here to observe, that I had a conversation with Judge Innes relative to the overtures made by the Spanish government through Powers, &c. but was ignorant of the papers being in his possession, until informed by himself in July last, and at my request he placed them in my hands in the succeeding month, until I had taken copies; the first was a letter from the baron of Corondelet to Mr. Sebastian, dated at New Orleans, 16th. July, 1795; the second, without date, consisting of propositions or rather concessions by his catholic majesty, in favor of the citizens of the United States west of the Apalachian mountains; the third, propositions to the people of the western country by the baron of Corondelet, signed by Thomas Powers, and dated at Louisville, July 19th, 1797; and the fourth, and answer without date. The two first were in the handwriting of Mr. Benjamin Sebastian, the third in that of Judge Innes, and the fourth in that of George Nicholas." (*Report of Committee investigating the pension charge against Sebastian*, from the press of James Street, 1806, page 26.)

[111] Edmund Randolph to Wilson Cary Nicholas, October 19, 1807, Library of Congress, *Innes Papers*, XIX, 49.

[112] *Idem*, 49. It would unreasonably lengthen this introduction to expose in detail Marshall's confusing circumstantial arguments to connect Wilkinson, Nicholas, and Innes with Carondelet's scheme. Compare Gayerre's *History of Louisiana, Spanish Domination*, 364, giving Carondelet's letter to Wilkinson and showing that Wilkinson, who was then United States Major-General, refused to further the scheme.

"Kentucky and Virginia Resolutions of 1798" were promulgated, that Colonel Nicholas, a year before his death, wrote and published the letter, now reprinted, to "his friend in Virginia," Mr. Thruston.[112½]

We have now considered, if not all, at least all the main written evidences which Marshall relies on to support his Spanish conspiracy charges against the four men who caused the publication of Littell's *Political Transactions* and against Colonel Nicholas, namely:

1. The public address of Muter, Innes, Brown and Sebastian in March, 1787;

2. Innes' letter to Governor Randolph in July, 1787;

3. Brown's letters to Muter and McDowell in July, 1788;

4. The minutes and resolutions of the various conventions, and addresses to the people ordered by them;

5. Colonel Thomas Marshall's letters about Wilkinson's pretended reading of his "memorial" in the November, 1788, convention, and Brown's evasive statement when called on by Wilkinson;

6. The two Carondelet overtures of 1795 and 1797, and replies by Nicholas and others.

It must be understood, however, that although all these papers have been quoted and discussed in the preceding pages, only the convention proceedings, resolutions, and addresses to the people were publicly known until some years after Carondelet's last effort to detach Kentucky from the Union. The public never learned what Brown had written to Muter and McDowell about Gardoqui's overture, or of Carondelet's two overtures, until in 1806, when Sebastian's receipt of money from Spain was disclosed in a legislative investigation which will be discussed presently. Innes' letter to Randolph was quoted for the first time, it is believed, in the first edition of Marshall's *History of Kentucky*, in 1812.

During the twenty years after his defeat by Wilkinson—from 1786 to 1806—Humphrey Marshall was engaged in almost continual conflict with those he afterward charged with complicity in a Spanish Conspiracy; but apparently he did not make the charge openly until

[112½] Library of Congress, *Innes Papers*, XIX.

the latter year. Until then his enmity and personal attacks were mainly directed against Judge Innes, in whose court his law cases had to be tried. When decisions were against him, Marshall ascribed them to the prejudice and corruption of the judge, for he ever regarded as an enemy anyone who opposed him in politics, or litigation, or who decided a case against him, or testified against him.

On March 5, 1792, Wilkinson, who had been commissioned by President Washington as a brigadier-general in the United States Army, at once began plotting to supplant his superior, General Wayne. Four years later Wayne died, and then Washington made Wilkinson commander-in-chief of the army—a position which, despite his continuing treasons, he held for nineteen years.[113]

In 1802 Colonel Thomas Marshall died, and next year one of his daughters married Joseph Hamilton Daviess, a talented young lawyer of very peculiar temperament and violent prejudices, who became Humphrey Marshall's coadjutor in attacking leaders of the opposite party. Especially in criminal cases, Daviess won considerable reputation for oratory, doubtless of the florid and impassioned kind then relished by the western public. An impression of the man and his times is given in a biographical sketch, as follows:

"Being a federalist, he was excluded from any hope of political advancement, and consequently devoted himself to his profession and attained a high position at the bar. His eccentricities made him famous. Instead of 'riding the circuit,' he used to shoulder his rifle and range the woods from town to town; and he usually appeared in court in a hunting costume. In 1799 he acted as second to John Rowan in a duel in which Rowan's antagonist was killed, when both principals and seconds fled to avoid prosecution. Daviess was for some time a fugitive; but, after hearing that Rowan had been arrested, returned, appeared in court as his counsel, and secured his acquittal. It is said that he was the first western lawyer that ever argued a case in the U. S. Supreme Court. He came to Washington in a dilapidated hunting uniform, gained an important suit, and returned home in

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[113] During Madison's administration he was "charged with complicity with Burr and with being in the pay of Spain but was acquitted for lack of evidence" by the ruling of Chief Justice Marshall. Thereupon he removed to Mexico, which he doubtless thought would afford desirable opportunities for the exercise of his peculiar talents, and there he died December 28, 1825, aged 68.

the same peculiar costume."[114] Rowan, a Pennsylvanian by birth, also attained distinction as a Kentucky orator, co-operated with Humphrey Marshall in his attack on Judge Innes, and became Marshall's attorney in a libel suit of Innes against Marshall, which will be mentioned again later.

We are now to meet a new and interesting personality with whom Marshall vainly endeavors to implicate Innes and other Kentuckians in a conspiracy to disrupt the United States. This was Aaron Burr, whose killing of Alexander Hamilton in 1804 shocked the entire nation, made Hamilton a glorified martyr, and Burr something of a demon, in the minds of a great part of the American people, Republicans as well as Federalists. Marshall says Burr had detached himself from the Republican party by "irreverend speeches affecting Mr. Jefferson's administration, &c. &c.; else, possibly, his killing Colonel Hamilton in the same year, might have ensured to him a repetition of the vice presidency. But, although the one offense was pardonable, the other was not and Burr, after finding himself exiled from party and from home, abandoned himself to profligate schemes, and visionary greatness; in the pursuit of which, he turned his attention westwardly."[115] Burr seems to have had some scheme for overthrowing Spanish rule and setting up a new one in Louisiana, or Mexico; but to this day his precise object is not definitely known. It seems certain, however, that it had nothing whatever to do with carrying the western people "into the arms of Spain," as Marshall would have us believe, but was wholly directed *against* the Spaniards. Yet Marshall, and perhaps Daviess, assumed that Burr's scheme was a *pro*-Spanish, instead of an *anti*-Spanish one; that it was secretly encouraged by the leaders of a "Spanish party" in Kentucky; and that the object of the scheme was to detach the western country from the United States![116]

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[114] Appleton's *Cyclopedia of American Biography*, II, 92.

[115] Marshall's *Kentucky*, II, 371.

[116] Marshall's method of making his Kentucky opponents appear confederates in Burr's scheme appears in the following introduction of Burr (*Idem*, 372):

"May the 25th. [1785] Colonel Burr was in Frankfort; having been preceded by *conjectures*, that he was one of a company who were about to open a canal on the Indiana side, to pass the falls of the Ohio, and a rumour that he was appointed governor of Louisiana. He rather affected privacy;—but was seen,

When Burr was secretly gathering men and arms for his visionary scheme against the Spaniards, Daviess, as state's attorney, brought charges of treason against him in the United States District Court before Judge Innes. No sufficient evidence being offered to support the charge, it was dismissed, whereupon Marshall denounced this dismissal as proof of Innes' complicity in Burr's alleged but unproven treasonable design against the United States.[117]

Having now quoted and discussed in chronological order the various documents written or received by the alleged "Spanish conspirators," and their conduct with reference to them, we come to the period when Brown's letters to Muter and McDowell communicating Gardoqui's overture, and Carondelet's two overtures, were first published.

In 1787 the first newspaper west of the Alleghanies—the *Kentucky Gazette*—was established at Lexington by John Bradford. He seems to have been little of the partisan, but was a mild Republican and friendly with the men whom Marshall attacked. In the winter of 1805-06 two men, John Wood and J. M. Street, came from Richmond, Virginia, to Frankfort, where Marshall lived, and began publishing another newspaper called the *Western World*, which became the vehicle of nearly all Marshall's vituperative onslaughts on his opponents. Wood said the publication of all but the first of these articles was without his approval, and due entirely to Street, who at once became the ally of Marshall and Daviess. Wood thereupon severed his connection with the paper, which led Marshall to represent him as incapable and pusillanimous, but Street as a man

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admired, and talked of, by some of his choice spirits. His stay was short. He * * * progressed southwardly; visiting, *it is believed*, Nashville, Natchez, New Orleans, St. Louis, Vincennes, and Ohio; previous to his return to Lexington, in August, on his way to the eastward. In the mean time, *it was said*, that the government of Indiana had not only passed a law for the canal, but had also authorized this ostensible 'canal company,' to become bankers, on the canal stock; and that *John Brown*, of Frankfort, *was concerned* in the project. This may be *considered*, as the first scheme devised for the purpose of raising money, to further the ambitious projects of Colonel Burr, in the western country." This quotation is made, and several words italicized, merely to give a typical specimen of the "conjectures" Marshall so often and so deceptively presents to convict Brown, and others of an alleged but wholly fictitious "Spanish party," of secretly carrying on a treasonable conspiracy. Author's italics.

[117] The absurd nature of this charge and the utter failure to prove it are very evident in Marshall's own account of it in his history. (II, 385, etc.)

"of sterling mettle." Wood's letter, quoted in the footnote, will probably give a more trustworthy impression of his character and of Street's than Marshall's history.[118] The fact that the *Western World*, although published by Street, was dominated by the Marshalls and Daviess was at first not generally known, but later was made plain. Some of Marshall's earlier defamatory articles were signed "Coriolanus"; then he adopted the pen name of "Observer," which he afterwards acknowledged; later he wrote over his own name, and openly assumed editorship of the paper. For venomous and indiscriminate abuse, the *Western World* was perhaps unrivaled, even in that era of rancorous polemical publications. Parts of his *History* are a mere rehash of the *Western World* articles.

It was to reply to the early attacks on them, and before the Sebastian trial, that Littell's *Political Transactions* was published. Innes, Brown, Todd, and Wallace got Littell to prepare it. No doubt all of them gave him facts and papers for use in his book, and made suggestions and corrections of his text. Todd, having been clerk of all the conventions, probably furnished copies of the minutes and addresses. Littell's book was written in September, 1806, during

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[118] Wood's letter of June 22, 1809, to W. S. Hunter. (Library of Congress, *Innes Papers*, XXII, 178):

"You may be assured, sir, it was with the utmost regret that I felt myself accused of the pieces in the Western World, to which you allude. * * * As you and two subscribers at Versailles paid one half year in advance and have only had the papers for two or three months I shall trouble you to apply to the postmaster at Frankfort who will refund the balance, he having in his hands the subscription of five or six subscribers at Frankfort.

"As I understand several erroneous reports have been circulated by Street and his advisers respecting me, I have caused Mr. Wilson of this place, who is married to a niece of Mrs. Greenup, and who corresponds constantly with the Governor, to write to him a correct statement of the business which carried me and Street to Kentucky and the cause of my return. Mr. Wilson was the secretary of the Richmond Company who employed me, and consequently, is well acquainted both with my character and views.

"* * * I shall now take the liberty of giving you a short account of the cause of my relinquishing the Western World. My views in commencing the Western World were very different from those generally attributed to me. The only gentlemen in Kentucky to whom I ever ventured to unbosom myself in this respect were Henry Clay and Robert Alexander. The 2nd. number was however no sooner published than I perceived that my real object would be entirely defeated by the ascendancy which I saw Daviess and H. Marshall were gaining over Street. I immediately therefore informed Mr. Clay of my apprehensions and after the appearance of the 2nd. number in the month of July, I called Street to an interview before him at Mr. Bush's, and used my exertions to prevail with him immediately to break off all connection with the Marshall family. Mr. Clay can best inform you of the harsh language which passed between us at that time on this account. It was also to the friendly aid of Mr. Clay that a reconciliation between us took place, but the reconciliation was only momentary, and I may with truth affirm that, although Street and myself were apparently on good terms,

the heat of a most bitter and exciting public controversy, in order to get before the people a reply to Marshall's tirades. It does not mention Carondelet's overtures, which had not been made public when it was printed. It also omits discussion of matters about which the Kentuckians were already informed, and of other subjects which were only brought forward by Marshall years afterwards, in his history. In contrast with his virulent attacks, Littell's reply was, for a polemic of that day, remarkably dignified, though forceful.

In the summer of 1806 Marshall charged Sebastian with receiving a pension from Spain in payment for treasonable services. The charge led to an investigation of Sebastian's conduct by a legislative committee, while the *Western World's* charges against Innes soon afterward led to his bringing libel suits against Street and Marshall. The proceedings in the committee investigation will be explained presently; but, to avoid confusion, the main events which were brought out in the investigation will first be given in the chronological order of their occurrence.

Charles Wilkins, of the merchant firm of J. & C. Wilkins at Natchez, said that in the fall of 1804 he found amongst the papers left with the firm by one John Seitz, deceased, a draft on "the Spanish governor at New Orleans, or any other person authorized, drawn by

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yet from that period our views and inclinations were more hostile to each other than Street and the editor of the Palladian. I however at length determined after the investigation into Sebastian's case, if I were not to write under my own signature, immediately to relinquish all concerns with the paper. I informed Mr. Clay, Mr. Alexander, and Mr. Wilton of Lexington of my design. By their advice I relinquished the paper, although I cannot but wish I had persisted in writing under my own signature according to our agreement, as this would effectually either have changed the complexion of the paper or broken it entirely up. In relinquishing the establishment I may affirm that I was completely swin[dled] out of at least one thousand dollars. Each of us at commencement advanced 50 dollars, and at my departure the only terms I could obtain were Street to pay my expences to Frankfort 20 dollars in money, a bill for seventy dollars payable in July and the one half of the profits arising from publishing the report of Sebastian's case before the Legislature. Mr. Clay advanced me seventy dollars on Street's note, which I understand even Street means to contest although there was a written agreement between us. Thus have I been swindled and slandered by one whom I supported in Richmond, as the citizens of this place well know, three months before we set out for Kentucky, paid all his expences from Richmond to Frankfort and afterward established him in a lucrative business. Yet even those terms I preferred to accept, rather than continue connected with one who I clearly perceived had lost every principle of honour. As to my being employed by Colonel Burr, Mr. Clay will convince you the story was entirely false. I have not spoken to Colonel Burr for these five years, nor have I been in his company except five minutes at Mr. Wilson's house in Richmond, where by accident I met him at tea."

Benjamin Sebastian for the amount of his * * * pension." Wilkins also found an unaddressed letter of Sebastian's which is copied in the footnote below.[119] In some way Marshall learned of these papers, and thereupon claimed to have positive proof from Wilkins that Sebastian was a pensioner of Spain. His charge was based on Sebastian's letter and draft, and on the statement made about them by Wilkins, who was a man of unimpeached veracity. Judge Innes, hearing that Mr. Wilkins had discovered evidences of Sebastian's receiving a pension from Spain, called on Wilkins, who afterwards testified before the committee as follows:

"In the month of August last [1806] Judge Innes called on me in Lexington, to inquire into the circumstances relative to a pension which it was said judge Sebastian had received from the Spanish government at New Orleans. * * * Judge Innes said Mr. Morrison, of Lexington, had communicated to him information which he had received from me; but believing judge Sebastian incapable of any thing inconsistent with his character, induced him to think that which he had received could not be correct. I immediately detailed to him all the knowledge I possessed, and the manner by which I procured it * * * Judge Innes expressed his surprise, and regretted that he, judge Sebastian, had suffered himself to become the pensioner of Spain, and observed to me, that there were some circumstances attending this transaction, which I had not been informed of, and that but two or three persons now living, were

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119. "Louisville, February 18, 1804.

"DEAR SIR:

"The intelligence of your having safely arrived at Natchez, about a month ago, gave me very considerable pleasure, not only because you were thus far secure from the dangers of a hazardous voyage, but also that you would soon have it in your power to determine whether the application to be made on my account would be productive or not. As this subject is all-important to me, and, of course, I feel considerable solicitude about it; the sooner you can inform me of the true situation of the business the better; for if you succeed, I shall be eased of a great weight of anxiety; and if you do not; I must immediately make the necessary preparations to descend the river myself, for the purpose of collecting proof of my situation, and lay a statement of the business before the minister. If the person who was authorized to have transacted this affair in N. O. should be gone hence, before you arrive there, it is probable the application must be made at the Havanna; and if this idea had suggested itself to you, I have flattered myself that *that* circumstance would hasten your departure from Natchez; or that you would devise some mode whereby application at N. O. might be made, through the agency of some confidential person. Accept the warmest wishes for your prosperity and happiness, of your sincere friend, and humble servant,

"BEN. SEBASTIAN."

(*Report of Committee Investigating Pension Charge against Sebastian*, from the press of James Street, 1806, 4.)

acquainted with. He, judge Innes, then communicated to me the substance of the letter from the baron of Carondelet to Mr. Sebastian, which had a reference to col. Nicholas, Mr. Murray, and col. Innes, in the year 1795; the result of the conference between Sebastian and Gayoso at New Madrid, and as nearly as he said he could recollect, the purport of the concessions, to be made by the Spanish government, to the people of the western country, &c. Judge Innes proceeded to communicate the substance of the propositions made by a certain Thomas Power, to the above mentioned gentlemen in the year 1797, and the reply thereto, by col. Nicholas and himself.

Judge Innes further observed, that copies of Power's communications, and the answer, would be left with Mr. James Morrison, in Lexington, to take copies; and that Mr. Morrison should be instructed to shew them to me for my perusal. I called upon Mr. Morrison, in one or two days after the conversation between judge Innes and myself, and was put in possession of the papers alluded to above. * * * The reading of the papers shown to me by Mr. Morrison, induced us to converse freely upon the subject. He detailed to me the substance of frequent conversations between him, Mr. Morrison, and col. Nicholas, about this transaction; and communicated to me the reasons assigned by col. Nicholas for withholding this information from the president of the United States, * * * Judge Innes assured me, that he never heard that judge Sebastian had been in the receipt of a pension from the government of Spain, and observed, that he feared judge Sebastian had acted indiscreetly."[120]

Marshall says the *Western World's* attack on his opponents created "consternation of some of the guilty, * * * they being so named or described therein as to be known. * * * The people are observed to take deep interest in the subject and to expect the promised disclosure with more than ordinary curiosity and anxiety. The 'Western World' became the general topic, and of course was read with avidity. Another number appeared, in the character of the first, and existing impressions were deepened: society was agitated."[121] Marshall says an address to the legislature praying an inquiry into Sebastian's receipt of a Spanish pension "was printed confidentially, having yet to encounter the opposition of Henry Clay,

[120] *Report of Committee Investigating Pension Charge against Sebastian*, from the press of James Street, 1806, 24.

[121] Marshall's *Kentucky*, II, 377.

John Allin and others who found their interest supported by it, as attorneys and politicians of the time. The efforts of these gentlemen were directed and exerted to prevent the legislative inquiry * * * In the development of the Kentucky intrigue * * * it became an object to get it before the approaching session of the legislature. To effect this, an address to that body, was drawn up by 'An Observer' [Marshall], stating in pretty clear terms that Benjamin Sebastian, one of the judges of the court of appeals, *was a pensioner of Spain;* and praying an inquiry."[122]

A printed address to the people, reiterating the charge and evidently written by Marshall, was then circulated for signatures in Woodford County by William Blackburn, of the Marshall faction and a member of the legislature, and by him carried to that body. Thereupon the following resolution was offered in the House of Representatives by John Pope: "Whereas this house has been informed, and given to understand, that Benjamin Sebastian, one of the judges of the court of appeals, of this commonwealth, has been, during his continuance in office, a pensioner of the Spanish government: Wherefore, *Resolved*, that a committee be appointed to inquire into the fact, and such other facts relating thereto as may be deemed proper for investigation."

Says Marshall: "Mr. Simpson desired to know, if the house would sanction this proceeding upon hearsay, or mere surmise: an affidavit stating the charge, was at least necessary to justify the adoption of the resolution. Mr. Pope said he believed it had not been usual to require an affidavit on similar occasions. * * * The question was put to the vote, and carried in favor of the resolution; whereupon a committee was appointed, and vested with the usual powers." This refusal to require Sebastian's accuser, Marshall, to make his charge under oath, and thus assume personal responsibility for it and become liable to prosecution for perjury if the facts alleged were false, violated the very first principle of justice. From time immemorial this principle has been recognized as fundamental, as Marshall and every other lawyer in the legislature must have known.

Marshall says: "After the committee met, and determined to send for witnesses, Sebastian and his friends, considering his detection unavoidable, if the investigation could not be arrested; attempted

[122] Marshall's *Kentucky*, II, 377.

first to obtain a postponement, under pretence of giving the judge time to prepare for his defence: that failing, and knowing his guilt, in the next place, in order to screen others, who would unavoidably be exposed, and who had also stood out, the 'patriots of their day,' the judge resigned his seat in the court of appeals; of which information was sent by the governor, to the committee; who refused to take any notice of it, and proceeded."[123]

A public scandal nearly always arouses a public demand for its ventilation. For nearly twenty years Marshall, at first privately, but afterwards openly, had been circulating his charges, sometimes of treason, against nearly all his prominent Kentucky Republican opponents; and when this pension charge against Sebastian was made, Federalists of his faction in the legislature were sure to seek Sebastian's conviction and, if possible, implicate others as his confederates. On the other hand, the Republicans, being unwilling to oppose the investigation, lest they be charged with desiring to suppress the facts, naturally let the hostile accusers pretty much control the proceedings. Under such circumstances an investigation was not likely to be a fair one; and this one certainly was not.

Our only available account of the proceedings is in the *Report of the Select Committee*, printed by Street.[124] Of the first meeting of the committee, the *Western World* said: "This committee met yesterday. In the forenoon of the day, a letter was received by the speaker of the Legislature from Judge Sebastian, informing the house that, conscious of his innocence, he had hastened to town to meet any charges which might be preferred against him, but at the same time prayed that the enquiry into his conduct might be postponed until he had sufficient time to procure evidence to rebutt any charges which might be alledged."[125]

Whatever the trial might develop as to Sebastian's guilt, justice plainly required that he should be given sufficient time to procure such evidence; and had his accusers aimed at justice, time would have been given him. Neither his accusers nor the select committee, however, aimed to give him a fair trial, but to convict; and his request for time to procure evidence to rebut the charges against him was refused. Seeing that the committee was bent on convicting

[123] *Idem*, 380, 381.

[124] It was reproduced in the *City of Washington*, A. & C. Way, Printers, 1808, when Marshall's lawyer, Rowan, then a member of Congress, unsuccessfully moved an "inquiry into the conduct of Harry Innes, District Judge of the United States."

[125] November 27, 1806.

him, on the testimony of his accusers only, Sebastian sent his resignation as Judge to Governor Greenup, who promptly sent it to the speaker of the House.

Having resigned and no longer holding any office, Sebastian could not have been lawfully tried for treason or other offense except in a court of justice; and this every lawyer on the committee well knew; but it did not deter the hostile committeemen from pursuing their *ex parte* investigation, for they were bent on implicating others than Sebastian in a Spanish conspiracy—especially Innes. Various witnesses were called to prove Sebastian's guilt, none in his defense. Amongst those called was Judge Innes, who (says Street's *Report*), being sworn, "answereth to the following questions:

"Do you, or do you not know of Mr. Sebastian's receiving money from the Spanish government, or of any officer of that government; and at what times?

"Have you any knowledge of any negociation, which was entered into, or attempted by Mr. Sebastian and the Spanish government at New Orleans, or with any officer of that government? If you have, depose as to these facts.

"*Answer to the first interrogatory*: The deponent saith, he hath very little knowledge; and that the first intimation which he ever received upon that subject was from Mr. Wilkins, in Lexington, some time in August last; that as Mr. Wilkins has deposed to the fact, and any thing detailed by this deponent as coming from that gentleman would be hearsay, the deponent conceives it improper to relate it; that Mr. Wilkins informed this deponent of a letter signed by Mr. Sebastian, which he had in his possession, and which he found among the papers of Mr. Seitz, relative to a money transaction, which he promised to shew this deponent, and give him a copy; that the next day Mr. Wilkins shewed the original letter which was signed with Mr. Sebastian's name, but had no direction, it being supposed to have gone under a cover; which letter this deponent, from his knowledge of Mr. Sebastian's hand writing, believes to be his; and Mr. Wilkins gave the promised copy after comparing.

"This deponent further states, that he had no communication with Mr. Sebastian, after receiving the said copy, till the Saturday of the first week of the session of the court of appeals, in October last, when in an interview in this town, this deponent mentioned the information he had received from Mr. Wilkins, respecting the bill for

a pension, and shewed him a copy of the letter. Mr. Sebastian read the letter, said he had no recollection of having written such a letter, and acknowledged that he had given Mr. Seitz the bill; and then observed, that the pension had been given to him, in consequence of the business which induced him to go to New Orleans in 1795.

"*Answer to the second question*: I have. But before this deponent proceeds to answer the question, he requests to be indulged with making some preliminary observations on the state of the public mind in this country in the year 1794, respecting the navigation of the Mississippi. This deponent observes, that it must be known and recollected by some of the committee, the violent heat that pervaded this state, arising from the publications and proceedings of the democratic society in Lexington, and some other places; that it must be known and recollected that the French minister, Genet, had sent his emmissaries to this state to excite the people of Kentucky to offensive measures against the Spanish province of Louisiana; that officers were appointed to command an army to be raised for that purpose; and that report said it was to consist of two thousand men. The truth of these facts, the deponent has no doubt, can, if necessary, be proved; and this deponent is of opinion that the proceedings of the people in the western country induced Spain to accede to the treaty at the time she did.

"The deponent further states, that such was the heat of the public mind at that period, respecting the navigation of the Mississippi, that he avoided all the meetings of the democratic societies, lest their measures should lead to acts which would attract the notice of the general government, and prosecutions be instituted, which could only be done in the court in which this deponent presides.

"That this deponent is convinced that the anxiety which appeared to pervade this state at that period, as expressed by the democratic societies, induced the president of the United States to send a messenger, to wit colonel James Innis, to this state, to communicate through the executive to the people of Kentucky the situation of the pending negociation between the United States and Spain, respecting the navigation of the Mississippi; that the messenger arrived in this place on the 25th. day of December, 1794, and in the course of that winter made a communication to governor Shelby, and that this communication quieted the public mind for the present.

"That the harvest of 1795 was very abundant, and in the fall of that year, a general murmur pervaded the people of this country respecting their crops, on account of the probability of having no opportunity of exporting their produce the ensuing season; that some time in November, or early in December, 1795, this deponent and William Murray, esq. received a letter from Mr. Sebastian, requesting us to meet him at col. George Nicholas's house in Mercer county, on a day stated in the letter, observing that he had business of importance to communicate, which related to us all. This deponent and Mr. Murray went to col. Nicholas's, where we were met, agreeably to appointment, by Mr. Sebastian, who submitted to us a letter he received from the Baron de Carondelet, then governor of Louisiana, to which this deponent refers, and makes a part of this deposition, in the words and figures following: [Here Judge Innes produced the copy he had made of Carondelet's letter to Sebastian, which has already been set forth.]

"The deponent further states, that, after deliberating on the contents of the letter, it was the unanimous opinion of the four persons referred to in the letter, that from the situation of the pending treaty between the United States and Spain, of which no communication had been received for near twelve months, and the uncertainty when it would terminate, that as it was a subject in which all the western people were greatly interested; that as it had excited great heat in the minds of the people of this country; that as we had no power to appoint agents to meet Col. Gayoso, as was requested; that, under these existing circumstances, it would not be prudent to communicate the subject matter of the letter; yet, that it was advisable to know what was the object of the Spanish government upon that important subject. To accomplish this object it was thought advisable, that, as the communication was made to Mr. Sebastian, he ought to meet colonel Gayoso; and, in consequence of this opinion, Mr. Sebastian descended the Ohio.

"On Mr. Sebastian's return from New Orleans, in 1796, he informed this deponent colonel Gayoso was at the mouth of the Ohio river, waiting an answer to the baron's letter; that the severity of the weather induced them to go to New Madrid, where a conference took place on the subject of the letter; that, among the concessions which were stipulated, Gayoso proposed to reduce the duty of six per cent. import and six per. cent. export, amounting to twelve per

cent. to four per cent.; that he, Mr. Sebastian, insisted that, as the Spanish government had come forward upon the principle of conciliating the people of the western country, no duty ought to be exacted from them, because they claimed as a right, the free and undisturbed navigation of the Mississippi river. Finding Gayoso fixed and immoveable on that point, he proposed to go to New Orleans, and refer the point in dispute to the governor general, which being acceded to, he descended the river to New Orleans with colonel Gayoso.

"Upon their arrival at New Orleans, the governor had a private interview with Mr. Sebastian, and requested information as to the point in dispute between him and colonel Gayoso. Mr. Sebastian stated the demand of four per cent. import, to which the governor replied, that colonel Gayoso was wrong, and that he would release it, as the plan was altogether conciliatory, but observed that he was then pressed by public business, yet would attend to him on a particular day, which he named; that a day or two preceding the time fixed for the interview, he received a message to immediately wait on the governor. Upon repairing to the government house, the governor informed him that a courier had arrived from the Havanna, informing that a treaty of friendship, limits, and navigation, had been entered into by his catholic majesty and the United States, which put an end to their business; that Mr. Sebastian then shewed this deponent a paper in his hand writing, containing the concessions which had been stipulated by Gayoso, and which he believes is the same paper now in his hands, and here presented to the committee, which is in the words and figures following: [This paper has already been given in full with comments.[126]]"

At this point Judge Innes said there were some other facts he had knowledge of that might be considered as having some bearing, and paused, but no further questions being asked him, he was dismissed. Several of the committee and others present so stated in their testimony afterward in the libel suit of Innes *vs.* Marshall.[127]

[126] The paper in Sebastian's handwriting was in possession of Honorable Ben Johnson, M. C., and was published in the *Louisville Evening Post*, October 12, 1901. It was also furnished for Colonel J. Stoddard Johnston's *History of Kentucky*.

[127] Judge Mills, afterward a distinguished judge of the Court of Appeals, said Judge Innes at this point "stated he had answered the questions and what related to the immediate subject of inquiry—that there were some other facts that he had knowledge of that might be considered as having some bearing—paused. No questions asked, and another witness, Col. Todd, called up. Why he recol-

After giving this testimony in the morning, Judge Innes heard that Sebastian had resigned his judgeship, and went to Governor Greenup's office to learn if it was true. The governor told him it was, and that he had notified the Legislature of the fact. Thereupon Mr. Davidge, one of the hostile investigating committeemen, came in. He afterward testified that Judge Innes asked him what the committee had done, or were about to do. He replied that the committee were determined or intended to proceed in the examination. Judge Innes then asked what was the object of the committee in proceeding further, when Sebastian had resigned, saying that the object of the investigation was to put the judge out of office, and as the judge had resigned, nothing further ought, or could be, done with him. Davidge replied that Sebastian's resignation did not suspend the powers of the committee, which ought to proceed with the examination and not let him off that way if he was guilty; that the committee was appointed to make the investigation and ought to proceed until the House suspended their powers. Judge Innes appeared much concerned, and with some feeling asked Davidge if he would say so as a lawyer, and Davidge, "with some degree of earnestness replied that he would say so, both as a lawyer and as a man, or words to that effect."[128]

We can well understand Judge Innes' agitation when this hostile committeeman declared this purpose. For years he had experienced the malignity and ingenuity of Humphrey Marshall's attacks upon him; knew that his enemies were in control of the committee; knew the public would believe that Sebastian's resignation was proof of his guilt, and might suspect that all who had any sort of dealings with him were sharers of his guilt, however innocent in fact. An honorable man is always sensitive to suspicion of his honor, and is sure to be agitated when foreseeing it about to be assailed before hostile triers;

lected so distinctly is he regretted he had not asked what those other facts were." Mr. Davidge testified that Judge Innes "the first time he was interrogated by Mr. Grundy, answered fully—said he had other information not immediately connected with the subject and paused." William Blackburn, who brought forward the petition for the investigation, testified that he took notes of the testimony and that "Innes when first examined and got through said he had other information not immediately connected with the subject and paused. No other questions asked and he dismissed. Witness thought it alluded to Dr. Watkin's mission." (Library of Congress, *Innes Papers*, XXII, Abstract of Testimony, 240, etc.)

[128] Library of Congress, *Innes Papers*, XXII, 20; Green's *Spanish Conspiracy*, 359. The printed report of Davidge's testimony is mislaid.

for usually it is the hardened criminal alone who can remain cool and self-possessed when his character is attacked. It was under these circumstances that, as soon as the committee reconvened, Judge Innes went again before it, and volunteered the following additional statement:

"This deponent having detailed every thing which occurred within his knowledge respecting Mr. Sebastian's receiving a pension, and the object which had induced him to descend the Mississippi in the latter end of 1795, or beginning of 1796, addressed this committee, and stated, that he was going to make a communication which was not pertinent to the subject of the testimony he had already given, but had relation to the same matter: that he was induced to do it in consequence of the slanders which had been falsely and lavishly heaped upon him by the publications in the Western World; that he had been charged as a disorganizer of the government; that he had been charged in an indirect manner as having improperly received Spanish money, on account of his intimacy with, and friendly agency towards gen. Wilkinson after he had joined the army. To make this communication was a duty he owed to his own character, and to the memory of the late colonel Nicholas, whose character has also been attacked by the publications in the Western World; that he made a solemn appeal to the chairman of the committee, to his country, and to his God, that the accusations were false; that the communication he was about to make was of a delicate nature as it related to this deponent, because, from the circumstances which attended it, much must depend upon his own veracity, as he could only prove the facts by circumstantial evidence, to wit: the declarations of colonel Nicholas in his life time on the same subject.

"This deponent then proceeded to state, that a certain Thomas Power, whom this deponent never saw, came from Louisiana in the summer of 1797, and made a communication to Mr. Sebastian in writing, which has a reference to the same characters that were named in the letter of the baron of Carondelet, herein before inserted; that Mr. Sebastian came to this deponent's house some short time after receiving the communication and shewed it to him; upon which this deponent observed that it was a dangerous project, and ought not to be countenanced, as the western people had now obtained the navigation of the Mississippi, by which all their wishes were gratified.

Mr. Sebastian concurred in sentiment, but observed, that Power wished a written answer, and requested me to see colonel Nicholas, saying that whatever we did he would concur in. I promised to visit the colonel in two or three days. This deponent never had any communication with Mr. Murray upon the business, nor does he know that Mr. Sebastian ever did inform Mr. Murray of it.

"This deponent rode to Lexington and had a conference with colonel Nicholas respecting the communication from Power, who agreeing with the deponent that the proposition ought to be rejected, he, colonel Nicholas, instantly wrote an answer, which was copied by this deponent, signed by both of us, and directed by me; that the copy of our joint letter was taken possession of by me, and has been ever since in my possession, except for a short time that I left it in the hands of Mr. Morrison in August last to have copied, as [he], being the executor and friend of colonel Nicholas, wished to have a copy; Mr. Morrison having previously informed me that colonel Nicholas in his life time had related all the circumstances to him, and that he had communicated it to James Ross, esq. of Pennsylvania, when in this country, in I believe 1798, who was then a senator in the congress of the United States.

"This deponent, since making this communication, recollects that Mr. Sebastian informed him when he gave up the original paper to be submitted to colonel Nicholas, Mr. Power requested it to be returned to him with our answer, which was done, but not until this deponent took a copy, which, with the answer, are as follows:" (Here Judge Innes produced his copy of Power's communication and the reply of himself and Colonel Nicholas, both of which have already been set forth.)[129]

Several other witnesses were called to prove Sebastian's guilt—none in his defense; and thereupon the committee reported him

[129] On December 1, Judge Innes "requested that the committee would permit an address from the Democratic society of Lexington, bearing date the 13th. of December, 1793, and addressed to the people west of the Alleghany and Apalachian mountains, and a remonstrance from the people of Kentucky to the president and congress of the United States, on the subject of the navigation of the Mississippi, as also a letter signed August LaChaize, dated, as is supposed from other papers, some time in May, 1794, addressed to the Democratic society in Lexington, stating that two thousand brave Kentuckians had been recruited to march against the Spaniards in Louisiana, to assist the French to regain that country, in support of the statement made by this deponent in his deposition relative to the state of the public mind in Kentucky, in the year 1794, which was accordingly ordered, and the papers read." They appear in Street's *Report of the Select Committee.*

"guilty of having for several years received from the Spanish government a pension paid in cash annually to the amount of two thousand dollars," and while judge being "employed in carrying on with the agents of the Spanish government an illicit, unjustifiable and highly criminal intercourse, subversive of every duty he owed to the constituted authorities of our country and highly derogatory to the character of Kentucky." Whereupon Mr. Grundy moved the following resolution:

" 'Whereas it appears to this house that since the institution of the inquiry into the charges exhibited against Benjamin Sebastian, esquire, that the said Sebastian has resigned his office of judge of the Kentucky court of appeals. Resolved, therefore, that any further proceedings to effect the removal of the said Sebastian from office is rendered unnecessary.' Which resolution being read, was concurred in."

Copies of Street's printed report of the committee's proceedings and the testimony were very actively circulated amongst the people, for Marshall and his faction aimed next to pillory Innes at the bar of public opinion. Notwithstanding the high character he had always borne, Innes could hardly escape being suspected of guilt by many people who did not know him and only read, or heard read, his own statement that he and Colonel Nicholas had received Carondelet's two overtures, had answered them, and had kept them secret from the public; for an average man nearly always considers such secrecy conclusive proof of guilt. To him, the patriotic motives which Nicholas and Innes gave to explain their withholding the overtures from the public were incomprehensible.

While Innes was thus widely suspected of treasonable dealings, Marshall, although he had long been generally regarded as a quarrelsome trouble-maker and had been very unpopular, was now widely credited with exposing a veritable Spanish conspiracy. In the *Western World* his attacks on the alleged "Spanish Conspirators" became more open and violent. For deciding two law cases against him, he denounced Judge Innes as "a judge, weak, partial, and an enemy to government"; "a faithless public servant and an oppressor of private rights"; "a judge who still holds office to the public degradation and disgrace of our country; a judge whom I rank with an Arnold, a Blount, and a Sebastian."[130] Thereupon Judge Innes brought a

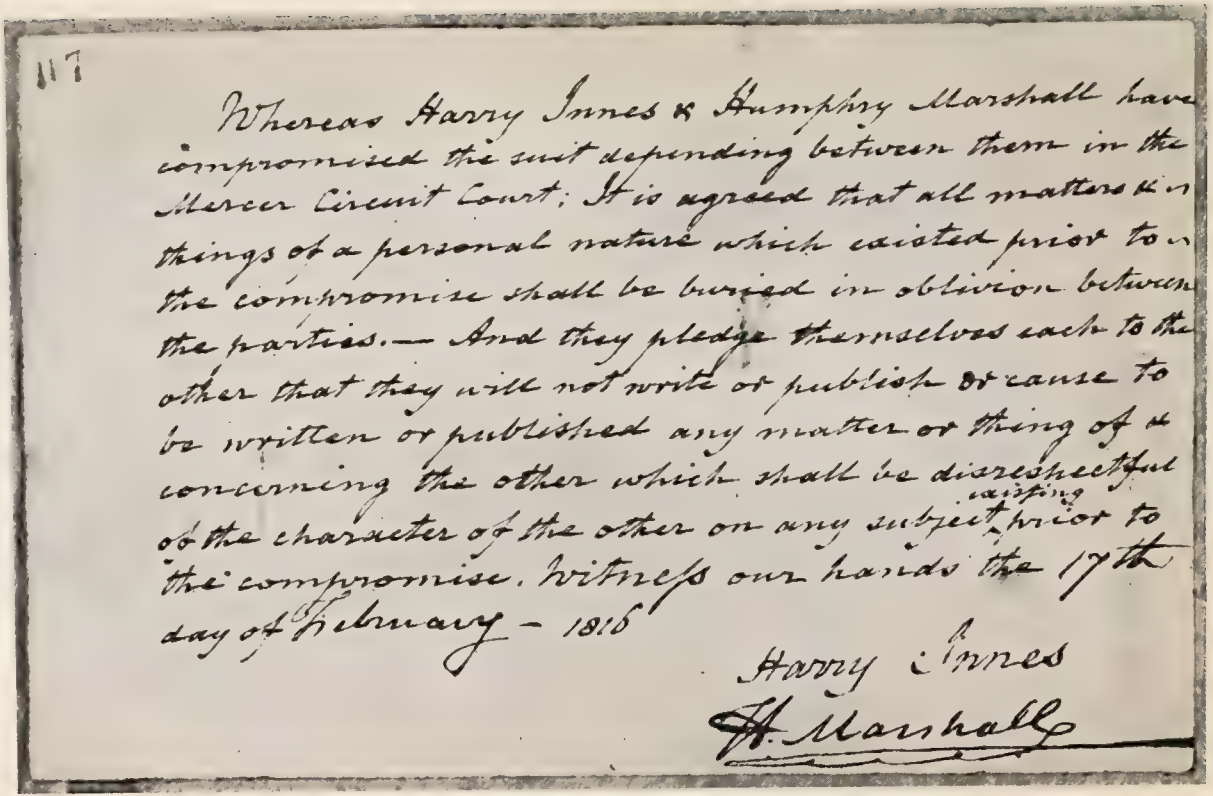
[130] Library of Congress, *Innes Papers*, XXII; Green's *Spanish Conspiracy*, 376.

libel suit against him; but while the hue and cry against himself lasted, evidently concluded that he could not get a fair trial and therefore discontinued the suit.

A new legislature, strongly inclined to pursue Marshall's charges and convict Innes of complicity in a Spanish conspiracy, was elected. Marshall was a member of the lower house from Fayette, and promptly offered resolutions calling for an investigation of Judge Innes' conduct by Congress.[131] A long preamble to these resolutions virtually declared Innes guilty. When he learned of this, he at once wrote to the Speaker of the House, asking an investigation of the charges against him, but no notice was taken of his request. Although the legislature was plainly hostile to Innes, Marshall's resolutions were defeated. Others, however, offered by his fellow-member and coadjutor from Fayette, Blackburn, were adopted, and likewise called upon Congress to inquire into Innes' conduct. Blackburn's resolutions and Street's printed report of the testimony taken by the committee in Sebastian's trial were soon afterward laid before Congress by Marshall's lawyer, Senator Rowan, who moved an inquiry in accordance with the resolutions. Congress referred his motion and Street's report to a committee, which found them insufficient to warrant an impeachment of Judge Innes, and so reported. Thus this new attack upon him ended.

After public excitement in Kentucky over the conspiracy charges against him had in some measure subsided, Judge Innes renewed his damage suit for libel against Marshall, and also pressed a similar suit against Street for publishing the libels. The suit against Marshall was strongly contested, and lasted until 1816. Meantime, in 1812, he published the first edition of his *History of Kentucky*, in one volume, which circulated broadcast amongst the people all his misleading assertions to prejudice them against his adversary and prevent a verdict in his favor. Many depositions were taken, and after one mistrial, the suit was set for trial in March, 1816. Some time before this Innes had won his suit against Street for

[131] *Mr. Rowan's Motion for an Inquiry into the Conduct of Harry Innes, Washington*, A. & C. Way, Printers, 1808. In his *Spanish Conspiracy* (372-373) Green quotes *Marshall's* preamble and resolutions in full and adds: "These resolutions were adopted by a general assembly inimical to the political views of Marshall; they did not utter his personal ill-will, but gave a voice to the deliberate sentiment of the representatives of the people." Every clause in this statement is utterly misleading.



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Whereas Harry Innes & Humphry Marshall have compromised the suit depending between them in the Mercer Circuit Court; It is agreed that all matters & things of a personal nature which existed prior to the compromise shall be buried in oblivion between the parties.— And they pledge themselves each to the other that they will not write or publish or cause to be written or published any matter or thing of & concerning the other which shall be disrespectful of the character of the other on any subject existing prior to the compromise. Witness our hands the 17th day of February — 1816

Harry Innes

H. Marshall

Facsimile of Marshall-Innes Agreement, from original in Library of Congress

publishing Marshall's libels and secured a verdict for large damages.[132] As the suit against Street involved the truth or falseness of Marshall's charges against Innes, this verdict strongly indicated that a similar one would be rendered against Marshall; but shortly before the suit against him was to be tried, he and Innes made an agreement dismissing it. Before the end of that year Judge Innes was dead.

The circumstances leading to this agreement and the way Marshall performed his part of it are interesting and will now be explained.

Captain John Jouett,[133] a friend of Judge Innes, wrote him that Marshall had visited him, and had "wished very much" to get rid of the libel suit, and offered, if it were discontinued—each party paying his own cost—that "He will *pledge himself in the prosecution of that book* [a new edition of his history] *not to use your name to your discredit or dishonour in know way, nor will he ever write a word in any paper, but that you are by him to rest undisturbed from this time forward as far as respects all previous transactions.*" Judge Innes accepted this offer, and thereupon Marshall (after an effort on his part to evade the pledge and be left free to discredit Innes further in a new edition of his history) signed with Innes the following agreement, and the suit against him was dismissed:

"Whereas Harry Innes and Humphry Marshall have compromised the suit depending between them in the Mercer Circuit Court; It is agreed that all matters and things of a personal nature which existed prior to the compromise shall be buried in oblivion between the parties.—And they pledge themselves each to the other that they will not write or publish or cause to be written or published any matter or thing of and concerning the other which shall be disrespectful of the character of the other on any subject existing prior to the compromise.

"Witness our hands the 17th day of February—1816.

"Harry Innes
H. Marshall."[134]

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[132] This verdict for damages broke up Street's business. After the verdict Innes offered to waive these damages, saying he only wanted vindication in the suit; but Street moved for a new trial and in support of his motion filed an affidavit which so perverted the truth and incensed Judge Innes' lawyers that they advised him to release no part of the damages. (Henry Clay's letter to Innes, Library of Congress, *Innes Papers*, XIX.)

[133] During the Revolution Captain Jouett by a daring ride saved the members of the Virginia assembly from capture by Tarleton and was voted "an elegant sword" by them for his heroism. His son Matthew Jouett was the great portrait painter.

[134] Library of Congress, *Innes Papers*, XXII, 276.

This pledge Marshall shamelessly broke. In November after it was given, Judge Innes died, no doubt believing his character as a man and citizen would never again be assailed by his rancorous enemy as it had been for many years. Otherwise he would have forestalled such renewed attacks by making public record of the compromise agreement, instead of burying it amongst the great mass of his private papers.[135] On March 1, 1822, Captain Jouett also died, [136] and thereupon Marshall, no doubt thinking his agreement with Innes would never come to light, in 1824 published a new, two-volume edition of his history, adding much to his previous edition to defame his dead adversary, and attacking his character quite as viciously as before the compromise pledge was given.[137]

Marshall's history was evidently written to consign his adversaries to infamy; and undoubtedly has done more than all else to pervert the early history of Kentucky and besmirch the characters of most of its leading men. This result has been due to three causes: (1) his book professed to be a fair history of Kentucky, and for many

[135] Sixteen volumes, numbered 16 to 32 inclusive, number 17 being omitted, are now in the Library of Congress.

[136] Collins' *Kentucky*, I, 619.

[137] See *facsimile* of the agreement facing cxi. The Jouett, Innes, and Marshall letters, now in the Library of Congress, show how it came to be made. On January 5, Jouett wrote Innes: "H. Marshall was necessarily detained at my house 2 days serving ejectments on my self and from 20 to 30 persons besides in this quarter, and I suppose thought he could be the best entertained at my house; so he accordingly made his headquarters with me, and the female part of the family not at home, nor are they yet but are in Flemming visiting. Of course, H. Marshall and myself had several long conversations about your business and his, we being entirely alone. He wished very much for your suit and his done with, declares seriously he is not affraid of a verdict going against him, *says he is old and so are you and he heartily wishes all those old animosities done away.* I then asked him how he could wish or expect a dismissal, his answer was he would pay his own cost but most positively refused to pay yours. I put the question home to him.—Mr. Marshall do you think Judge Innes a bad man; his answer was somewhat equivocal but said he never did right or speak one word against your morral or private character, and said further he had no doubt you had been duped by Gn. Wilkinson. I then asked him, under these impressions how he could persecute a man of your character; he then states your affair and his from beginning, which will be too tedious to go on paper, tho' I have my doubt but it grew out of a personal dislike and not on account of your badness of character. *I asked him provided peace could be made what would be his course when making out his second volume of the History of Kentucky.—He will pledge himself in the prosecution of that book not to use your name to your discredit or dishonour in know way, nor will he ever write a word in any paper, but that you are by him to rest undisturbed from this time forward as far as respects all previous transactions.* Now my old friend, if you are satisfied to lay down your arms you see in my aukward way how it can

years was the only one generally read; (2) his shrewd method of attack is oftenest covert and nearly always confusing; while for many of his damaging assertions he cites no record or other proofs, and thus leaves his readers without means for testing his accuracy or truthfulness; and (3) most later historians, being themselves uninformed about the facts, and either unable or unwilling to investigate them, have been content to accept and repeat his statements as veritable history. Some few, indeed, have done so with reservations; for his hostile *animus*, and his reliance on suspicions, adroit suggestions, and wholly unsupported assertions, rather than proofs, to support his charges, are too evident to escape attention. Several of these same historians, however, although warning their readers that his rancor makes him unreliable, yet base their accounts of the so-called Spanish Conspiracy almost entirely on his utterly untrustworthy statements.

The object of this introduction is to aid readers to understand his deceptive methods of argument, but it would be an almost im-

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be done and if this will do, and you can or will trust the management to me, rely on it the conditions shall not be worse than above stated." (Library of Congress, *Innes Papers*, XXII, 261-262.)

An unusually amiable man, old, in ill health, and wanting peace, Judge Innes concluded to accept Marshall's offer, and thereupon signed and sent duplicates of the compromise agreement to Jouett to procure Marshall's signature. On receiving them Jouett wrote to both Innes and Marshall. To Innes he said: "not one word of your enclosures [shall be] altered, they expressing in the fullest manner Marshall's ideas and mine;" that Judge Innes need not "be affraid that I was not aware of the man I was talking with * * * yet I wish you to be upon the allert, and if Marshall does not comply with the contents of my letter I am D. if I dont make him rue it to bottom of his heart. I know I have not committed either you or myself but I cant say that for him. I will write to Marshall upon the spot and make it known to you as soon as possible. I dont think I arrogate to myself when I say I think when I choose it I can [be] and am as suttle a fox as Mr. anybody." (*Idem*, 269.)

To Jouett's letter to him, Marshall replied as follows:

"I have this morning received your favour of the 26th. ultimo on the subject of the suit of Judge Innes against me, and I can but acknowledge your friendly offices in laying the foundation for the termination of that disagreeable business. I am in fact in the same humour as when at your house, and of course still willing to pay my own costs, and to let the Judge be at peace here and hereafter, upon the suit going off the dockett at the next March term. The entry may be made 'discontinued agreed' or simply 'dismissed' as the Judge may choose. Or the suit may be 'dismissed for want of prosecution.' In short the Judge may choose the mode of getting it out of Court without further prosecution. The disposition to compromise, removes every motive for desiring any sign of triumph on my part. And if the record could be obliterated, it would be to me a matter of indifference. On the subject of publication—I forego the design I had formed of giving in a pamphlet the history of the case, with proofs, speeches, etc. And this is a concession to the feelings of the Judge. Should I write the second volume of the History of Kentucky, which, if circumstances permit, I purpose doing—I shall give the sequel of the Wilkinson intrigue with the Spanish Government, and

possible task to discuss in detail the innumerable misleading assertions and even more misleading assumptions and insinuations in his stilted and insufferably prolix, but most cunningly contrived work. Indeed, it would be difficult to do so in four large volumes; for his persistent confusion of events, of their chronology, and of their relations with one another, and his common reliance on elaborately prepared suggestions, rather than tangible proofs or even direct assertions, would make the labor almost endless. His method of argument is often much like the quotations from court opinions which one lawyer charged another with making, saying they reminded him of a man who justified suicide by quoting from one part of the Bible: "Judas hanged himself," and from another: "Go thou and do likewise." All that has been attempted in this introduction has, therefore, been to explain the general course of the Spanish conspiracy controversy, and the real significance of writings that he quotes, and to

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no doubt it will be necessary to repeat the name of Judge Innes—but this shall be only done historically without reflections on his moral character. More than this should not be required, for more I cannot concede. Should your authority from the Judge empower you to meet me on this basis, I will see you in Winchester at such time as you shall name, or receive you at my own house, at your option, at any time before the middle of this month, of which please to inform me immediately by mail. Inasmuch as if no accomodation should take place, I shall prepare for trial at March—if an accomodation should take place, I have other business to do, which will require my attention.

"Yours respectfully,

"H. Marshall.

"N. B. On the subject of Judge Innes—it is clearly understood that what I will not do myself I will not consent that another shall do. H. M." (*Idem*, 264-265.)

Jouett saw through this attempt of Marshall to escape from making the pledge he had offered to make. He had previously written Marshall that Judge Innes, in accepting the offer, "bottomed his conduct upon the information given him by myself, in a word, he, the Judge, is willing to do all old things away and pay his own costs, provided he can rest in peace the balance of his days, and this I well remember you said he should do, so far as respected yourself, that you never would put pen to paper against him again, that is upon former occasions. The papers that you now are called on to sign, I know to be correspondent with our conversation." (*Idem*, 265.)

Jouett also wrote Innes calling attention to that part of it which Marshall "says in substance—that in the prosecution of his second volume that it will be necessary to use your name, but that shall be done historically and that your morral character shall not be interupted. This is the place I feared he wanted a whole [hole] to creep out and allow himself the right to abuse your public character," but Jouett said he "had given Mr. Marshall * * * no alternative but the papers sent up by yourself, for I certainly should have procured that point in preference to [any] other—of not sufring him to let loose upon you again—the very thing that produced the suit itself." (*Idem*, 267.) Marshall thereupon signed the written agreement, pledging himself never "to write or publish * * * anything * * * disrespectful to the character" of Judge Innes "*on any subject* existing prior to the compromise." How he kept the pledge the second edition of his history makes plain.

call attention to important facts which he ignores or misinterprets—in a word, to expose his grossly unfair arguments to condemn others. In truth, as any intelligent and careful reader of it will see, his work savors more of the cunning pettifogger than the trustworthy historian[138].

During a long search and study of the source materials, mainly unpublished, of our early western history, in preparation for writing a history of the Revolutionary West in diplomacy, politics, and war, the present writer has had occasion to become somewhat familiar with the facts relating to the so-called Spanish Conspiracy; but he has been unable to find reasonable grounds for believing there ever was any such conspiracy. He finds no sufficient evidence to prove any treasonable dealings with the Spaniards, except on the part of two of the men against whom Marshall preferred his charges, namely, Wilkinson and Sebastian. Undoubtedly they were separately conspiring with the Spaniards, but not with one another. They had dealings with one another, of course, but their aims were very different, and altogether different from those Marshall attributed to them. Sebastian was employed by Miro to spy on Wilkinson[139], and was very

[138] The lengths to which Marshall was willing to go when insinuating his charges without a particle of proof, and his roundabout way of preparing his readers to believe them, is illustrated in his *History*, Volume II, page 58. After devoting some ten pages to praising Colonel John Hardin, who was killed by the Indians (evidently in order to enlist the reader's sympathy for him and prepare the reader to believe Wilkinson sent him to the savages to have him killed), Marshall says Hardin "had been solicited by General Wilkinson * * * to become the bearer of a white flag * * * to the hostile tribes of savages"; that Wilkinson said to him: "'I wish you to undertake the business; because you are better qualified for it, than any man of my acquaintance; and because I think it will lead to something of advantage to you.' The service was believed by both, to be extremely dangerous; and might be fatal to the undertaker. It could, in fact, have been performed by many persons in the public service, just as well, as by Colonel Hardin. * * * Whether the general was really the friend of Hardin, and candid in his expressions of a desire to serve him—and thought such employment conducive to that end; or viewing him as a rival in fame, who might afterwards be in his way, if not seasonably put out of it—and hence induced to embrace the opportunity, so conveniently covered by the proposed mission, for effecting his purpose of removal, as by some was strongly suspected; there is no means possessed, of knowing. Certain it is, that Wilkinson, persuaded and pressed Hardin, to the undertaking—as he did Major Trueman, an officer of great merit under his command, and with whom he was known to be at variance, to undertake a like commission, in the same season, to another section of hostile Indians; and who shared a fate, similar, to that of Colonel Hardin. They were both known to be men of great firmness of character, and a ready self-devotion to dangerous enterprises, when their country called. They were both called—and both cut off. Nor will the general's moral character, suffer any diminution of value, in the estimation of those who know him, and duly appreciate it, by the insinuation, as to his motive for employing Colonel Hardin."

[139] Gayerre's *History of Louisiana, Spanish Domination*, 286.

far from being the latter's confidante. In truth Wilkinson had no confidante. His aims were ever his own secret, and were purely selfish; and all with whom he dealt he aimed to deceive. Little suspecting this, and by no means sharing his pretended extremist views, many honorable Kentucky leaders were his deluded friends, and allowed him to thrust himself forward and appear to be their political leader, because they had no conception of his real designs. Nor should it be hastily inferred from this that they were weakly credulous; for Wilkinson charmed nearly everybody he met, was easily the most popular man in Kentucky, and until after his return from New Orleans in 1788 appears to have excited no suspicion of treasonable designs.

Until 1812 Marshall's attacks on his opponents were mainly in newspaper articles and pamphlets. Had they been confined to such ephemeral publications, they would long since have been forgotten; but he was shrewd and vengeful enough to perpetuate them in his *History*. In one part or another of his book, and often in many parts, he impugns the loyalty, or character, or both loyalty and character, of nearly every prominent man of otherwise unblemished repute in Kentucky who opposed him. Governor Shelby, Governor Greenup, Judge Wallace, Judge Innes, Judge McDowell, Judge Todd, Colonel Nicholas, John Brown, Alexander Scott Bullitt, Henry Clay, and John Breckinridge are only among the most prominent.

Over a hundred years after the Spanish Conspiracy controversy arose, descendants of Mr. Brown and Colonel Marshall published books reviving it. In 1889 Mr. Brown's grandson, Colonel John Mason Brown, a Louisville lawyer, published *The Political Beginnings of Kentucky*. The book was written to defend his grandfather against Marshall's charges, but its author evidently had only a superficial knowledge of his subject, and his treatment of it was both timid and very vulnerable to severe criticism. Colonel Brown's book aroused the ire of Colonel Marshall's grandson and namesake, Thomas Marshall Green, who promptly published a rabid reply in a book entitled *The Spanish Conspiracy*. Colonel Brown died shortly

before his *Political Beginnings* issued from the press, and Green's reply was published very soon afterward. It hotly charges Brown with willfully evading, distorting, and suppressing the truth. Yet anyone familiar with the facts about the Spanish Conspiracy controversy must see that, for misapprehension and erroneous statements of facts and wholly unwarranted inferences, Green's book is more often vulnerable than Brown's, and is rivaled in errors by few others professing to be history. This, it is believed, is to be attributed wholly to his blind fury in argument.

Green was for some years editor of the *Maysville Eagle*, a man of most violent prejudices and passions, and utterly unqualified by either information or temperament to write sane and reliable history. His passions seem to have warped his judgment so completely as to make him utterly unable to distinguish his suspicions from proofs, or to see any interpretation of facts in a controversy except from his own side. His knowledge of his subject was most superficial and almost entirely based on Marshall's history and newspaper articles. In fact, his book is really little more than a blindly partisan restatement of Marshall's arguments—far less adroitly written, and far more violent and blundering. Nearly every page of his argument against Marshall's opponents fairly bristles with unintentional misstatements; but notwithstanding this, the writer, who knew him well and was fond of him, never questioned, and does not now question, his entire integrity of purpose in making those misstatements. Space forbids any detailed discussion of either his or Brown's contentions.

The writing of this introduction has not been an easy task. Several critical readings of Marshall's confusing and tiresome history were necessary, but this made only a minor part of the undertaking. His misleading assertions are so many that the mere selection for treatment of those most needing correction, and the exclusion from comment of others equally misleading but of less importance, made problems requiring no little study and time. Nor has the writing of the introduction been a congenial one. It would have been far pleasanter to dwell upon the virtues of our noted men of the early

days, than on the evil influence of one of them; but it seems a shame that the history of Kentucky, in its most glorious era, should be befouled and nearly all its leading men portrayed in its history as traitors, because they incurred the hatred of the morbid man who wrote the first generally read history of the state. If this introduction shall have the effect to stay future writers from carelessly accepting and repeating his unfounded assertions,—as nearly all Kentucky historians since his day have done,—it will have served the purpose for which it is written.

WILKINSON'S MEMORIAL

AND

EXPATRIATION DECLARATION

(From copy of *Pontalba Papers*, Rogers Clark Ballard Thruston MS. Collection, Louisville, Kentucky. Obtained from Louisiana Historical Society.)

Enclosure No. 1 with Private Dispatch No. 13 from Miro and Navarro to Valdes, New Orleans, September 23, 1787

WILKINSON'S MEMORIAL

The American Settlements, to the west of the Apalachian Mountains, enjoyed, during the Britanic Government, the free navigation of the Mississippi, and during the progress of the last revolution, communication with the Vassals of H. C. M. in Louisiana was maintained open; the advantages which a few travellers obtained from this commerce attracted the aims of a great many individuals of the Atlantic Coast, and the unanimity of the reports upon the fertility of the soil and healthfulness of the climate in the territory of Kentucky given by all those who had explored it, fixed the attention of people of all classes and conditions upon the western country.

My compatriots, who are active and enterprising, had, with the long use of the Mississippi under both the Spanish and British administrations, established a right which they considered indispensable, which belief was corroborated by the definite treaty of Peace and Amity with Great Britain; the hostility of the Indians and the public service on the Atlantic coast were great impediments to emigration: but Peace dissolved these obstacles and awakened anew the preoccupations in favor of the said western countries, and in 1784 about 950 souls arrived in the one district of Kentucky. Trade prohibition with America, which Spain proclaimed shortly afterwards, was at first considered as only temporary and to better express it, as a

formality of the negotiations between H. C. M. and Congress, which was anxiously and daily desired and expected.

We, nevertheless, remained deceived in our hopes, not only on account of the little attention shown to this matter by Congress, but the declared intentions of the Court of Spain to assure itself the exclusive right to the said navigation, which coupled with the confiscations made at New Orleans, filled the new Settlements with anxiety, cooled the hopes of those whose aims were directed toward the west, and removed the motives that originated these settlements; but other causes more irresistable in their nature promptly renewed them.

The last revolution involved the Americans in heavy foreign and domestic debts, and to provide for the payment of these, and to sustain the federative Government, Congress was authorized to ask the Members of the Union their portion, for which purpose the different States imposed taxes upon its citizens, who found them so oppressive that a multitude were reduced to the alternative of opposing the laws, or preferring to subsist, rather than to submit to imposition, sought refuge in the woods of the west. Thus voluntary emigration took place, and these impositions, neutralizing all the obstacles Spain and America interposed, should have produced a yearly emigration in the said Settlements equal to at least ten thousand souls,* and this will continue in the same manner as long as there is not the slightest appearance of relief.

It will not be improper to mention that in all Republics the execution of the Laws is, for known causes, lax, weak and vague; the Americans who crossed the Mountains and established themselves at a great distance from the executive authority of their respective governments, availing themselves of this principle and complaining of the lack of commercial advantages which their brethren of the Atlantic Coast enjoy, declared themselves unanimously against the tributes, without there being anyone willing to undertake the execution of the Law on this point.

In this situation the Western Settlements have contented themselves with the short and precarious outlet for its products, that upon their arrival the emigrants themselves afford, looking forward anx-

* After writing this page I have been informed by a man of honor and intelligence, recently arrived from America, that this year there will be an emigration of about 4000 souls.

iously to the day when Congress, taking into account their situation, would obtain for them the free use of the Mississippi, but what has been their astonishment and surprise, when instead of the protection which as members of the federative Union they had a right to expect and receive, they saw last summer this honorable body negotiate with Dn. Diego Gardoqui the exclusive right of navigation on the said River, in exchange for certain commercial advantages in favor of the people residing on the Atlantic Coast, and that seven of the twelve States represented ardently embraced this action! This device was received by the Western people as an infraction of the federative pact, which basely sacrificed their interests in favor of others, whose conduct irritated them excessively and when they combined it with continuous opposition to the measures proposed for their defense against the savages, they were induced to believe that they could expect nothing from the friendship and Justice of Congress. Imbued in this opinion, Kentucky is taking measures for its own safety, and to this end it has fortunately and considerably advanced its petition to the State of Virginia (to which it now belongs) to obtain an act of separation in order to be erected into an independent State and govern itself, and at the same time in order to preserve the public conduct against any imputation of excess or deceit, they have presented a memorial to Congress in which they recite the injuries and hardships which will befall them if they are deprived of the navigation of the Mississippi; they establish circumstantially their right as a member of the federative Union, and expressly declare that if Congress does not protect and sustain them in this desire it must consider the ties of their fidelity dissolved, they remaining at liberty to provide for their own conservation.

This was the frame of mind of the Kentucky Politicians (and their policies always direct those of the other Western Districts) when I took my departure in the month of May. Its future conduct will be largely governed by the determination Congress may take regarding Kentucky's Memorial, and what this will be no one can tell with certainty; but by inferring on facts and experience, I shall be able to deduct an evident opinion, to which end it will be necessary to manifest what the policy of Congress has been with regard to the above mentioned Settlements.

The extensive cession of territory to the Northwest made by Great Britain to the United States in the Peace of 1783 not having

been comprised in its expectations, was unlooked for and as a consequence the federative Councils were not prepared for it: this acquisition drew the attention of many to it as a fund with which to extinguish the National debt, giving rise at the same time to many kinds of speculations: in the Eastern States where reside the shrewdest Politicians of America, it was predicted that if those territories were peopled it would dissipate the strength of the Union and diminish the land values of the Atlantic Coast, so that self-interest immediately prevailed over those comprehensible principles of friendship and happiness that originated the revolution against Great Britain and its deputies in Congress determined to adopt the same policies which they had so recently condemned.

These sentiments, however, being repugnant to the aims of the Southern States, were never openly expressed, until last summer, when Sr. de Gardoqui presented his propositions: it became necessary then on account of the many different interests, to act with decision, and the mask having been removed in the heat and excitement of the discussion that took place between the Eastern, Middle and Southern States, the sentiments of each party were openly declared and sustained.

The recapitulation of the arguments alternately employed in this great question would be foreign to my purpose and annoying to my readers, and it will be enough to say that the controversy rose to such a pitch that threats were made of dissolving the Union. The United States thus divided, confused in its Councils, burdened with debt, without interior or exterior credit, could not, in spite of its zeal, take active measures to acquire the navigation of the Mississippi against the wishes of the Court of Spain: and when we add to these facts the thought that the most powerful and populous States are completely opposed to her, it strikes me we may freely and surely conclude that the Memorials of Kentucky and the other Western Settlements will not vary the policy of Congress in the slightest degree.

The evident consequence of this will be a distinct confederation of the inhabitants of the West, for its common welfare and happiness: this step, Congress neither can nor cares to stop; it cannot because it is without men, money or means to acquire one and the other: it will not care because this event has been foreseen with anticipation as inevitable, as a consequence of local circumstances and because

they hope that on account of the inability of these new Settlements to fill the Governmental offices, such confusion and disorder will arise that emigration will be arrested more effectively than by any act of Congress.

The first care of these people will be to establish forms of Government, and organize systems of general co-operation; having adjusted these indispensable preliminaries, they will direct their aims to the navigation of the Mississippi, the object upon which are based all their hopes of worldly happiness, and without which poverty and misery will be their only fate; but they will pursue it with valor and perseverance: knowing well the character of the Americans and the martial spirit, the last war infused into all classes, I speak with certainty when I say they will take up any proposition, no matter how desperate, in a cause of the utmost importance to them and their posterity.

The above mentioned settlements, whilst thinking over their situation, fixed their attention on two projects, either one of which they thought would fulfill their supreme desire. The first and least difficult is a friendly understanding with the Court of Spain. The second, reliance on its own resources and the indirect help of Great Britain. To undertake now, to point out the exact outcome of these two projects would be presumptuous, for they must undoubtedly adjust themselves to the circumstances of the times, and for this reason I will only speak of what may possibly happen, in accordance with the discourses of men who have influence in those Settlements.

These prominent men have observed that the understanding with the Court of Spain should be preferred above all others for the manifest reason that it could immediately and surely grant them what they wished without risk or expense to either party: in accordance with these ideas the sending of an agent to Louisiana and if necessary to Madrid, after the conjunction with United States was dissolved, was discussed, so as to solicit the privileges that the happiness of the district required, in terms satisfactory to the Policies and interests of Spain, and in case this proposition was rejected, then to embrace those made by Great Britain. In order to show what these are it is necessary to review the policy and purposes of this Nation.

The last American revolution, dismembering the British Empire, has considerably weakened this imperious Nation; the loss of thirteen new, vigorous and flourishing colonies has sensibly diminished her

power: this occurrence has generally embittered the Nation against the insurgents and profoundly affected its pride, exciting the deepest resentment in the heart of the King, so that both the Nation and the King are dominated by a passion that makes them consider as a benefit to themselves any harm done to America, hence they have spared no labor and no effort to disunite it's councils and divide the interests of the Union so as to destroy its commerce, and sow sedition among the inhabitants of the principal States: but when the eyes of this Nation were turned toward the Western Settlements of America, they anxiously contemplated an object which they conceived could satisfy their resentment against the rebellious Colonies, and at the same time would be advantageous to its own material aims.

Great Britain is at present owner of the navigation of the St. Lawrence River from its mouth to its source in the vicinity of the Mississippi; if it could also acquire possession of this one it would then own the two great places of North America, whose arms and branches traverse almost the Torrid and Frigid Zones, an immense country without equal in its soil and productions, it would then surround the United States of America, and in less than half a century would receive only from the contributions upon the progressive and inexhaustible fountain of commerce, an income superior to any its colonies ever produced.

This is a brilliant object, worthy of being appreciated by a great Nation, and I am authorized to state that this has not escaped its due attention: but the British Treasury has been so drained in the last war and continues to be so weak and confused that Great Britain will not dare an open rupture with Spain, for which reason her policy will be to employ the Americans of the Western Settlements in an attack against Louisiana, and if the results are favorable it will embrace the first opportunity to assure itself a right to the navigation of the River, and under this pretext receive Louisiana from the Americans as a compensation for the indirect help she may have given. These observations, inasmuch as they are related to future things, are certainly only speculations, which, however, are founded upon reason and probability, corroborated by the following facts:

Already in the year 1783 an English gentleman of rank approached me on the subject, and although he would not guarantee

the conduct of his Court, did not however doubt that at whatever time the Western Americans would separate themselves from the primitive States, Great Britain would receive them under its protection with pleasure, and that indirectly through its private agents would supply them from Canada, with arms, ammunition, clothing and money for attacking Louisiana and open the Mississippi, and if the undertaking succeeded, which he did not doubt, he was positive that Great Britain would without delay assure her pretention to the navigation of the Mississippi, and that if this affair occasioned a break between the two Courts, he had reason to believe that Great Britain would find an excuse, and probably the open support of several commercial powers who would not voluntarily allow that the valuable products of so vast a country should remain entirely closed to the rest of the world. In any event, he had the satisfaction of believing that Great Britain would risk a war with Spain for the purpose of navigating the River and that the only compensation it could expect from the Americans was *the Province of Louisiana*. This gentleman, whose name I must withhold, in obedience to principles of honor and confidence, I have since found out had conversed freely with the Count of Shelburne (then Minister in the last Cabinet) whose views and opinions agreed with the observations the gentleman had just suggested to me, and he added the above mentioned Lord had all the more easily given up the Floridas on account of the fact that they naturally would become a basis of discord between Spain and the people of the West of America, and in this would favor the ultimate views of his Court. Having gone thus far with the mentioned gentleman, it will not be amiss to mention the following authentic information received from the highest sources:

Last year several South American Agents arrived in London, and approaching the Minister, solicited from him assistance of arms and ammunition to favor the rebellion they had begun, to which the Minister replied that he could not grant their request, for between the Crowns of Spain and England there existed a treaty of peace and amity, but he recommended to these agents that they present themselves to a certain gentleman who informed them that he not only

was inclined to help them, but was able to do so in his own name without involving the two Courts, which was finally done. The gentleman furnished them the required articles and recommended to the agents that they employ an American ship then moored in the Thames, to transport these to Central America, and in accordance the Agents called on the owner of the ship, who, before binding himself for this service, judged it prudent to consult the matter with another American gentleman who was then in London, who persuaded him to refuse the offers of the agents, although these were considerable, and employed him to investigate the business of the Southern Americans in London, by which means he acquired the above information, to which the said agents added that the gentleman who had furnished them arms and ammunition told them there were thickly populated settlements of Americans West of the Apalachian Mountains, who could create a diversion favorable to the rebels, for which purpose he advised them to send agents there, but the American, knowing the geography of the country had no trouble whatever in destroying their hopes on this side and abandoning their idea.

When we consider these facts, together with the proposition of an English trader, last winter, to supply Clark and Green with ammunition and clothing to enable them to carry out their nefarious designs against Natchez and the other posts of H. C. M. in the upper Mississippi we can with justice presume that Great Britain preserves permanent aims upon this Country.

From this point in my observations, and in view of what is said above, we may deduct the following facts and natural inferences:

First: That the American Settlements, whose rivers flow into the Mississippi are already powerful and on account of their nature, irresistable, and should daily increase in strength.

Second: That the navigation of the Mississippi is the fountain from which they must hope for future relief and comfort, in consequence of which each individual is of himself always attentive to this object, and through the powerful incentive of self-preservation will employ any means, no matter how desperate, to attain it.

Third: That in order to promote this much desired end, they are working to separate themselves from the American Union, and that Congress has neither the power nor inclination to prevent this measure.

Fourth: That the Notables of these new Settlements are considering two projects, either one of which they believe can be conducive to the success of this, their favorite object: i. e. *an amicable arrangement with Spain, or hostilities with the help of Great Britain.*

Fifth: That this Power is courting those Settlements and will endeavor to insiduously bind them to attack Louisiana.

Sixth and last: That the above mentioned Settlements have determined to make the first propositions to Spain and in case these are not accepted, to embrace the policies of Great Britain.

There now only remains to say what the policies of Spain should be at this critical juncture, and this, to be truthful, is a task that would occupy the mind of the most distinguished in Europe; nor is it possible to establish any fixed system of measures the Government should follow, and these, without doubt, must be largely regulated by future events, for which reason I will endeavor with a faltering hand to give my opinion, relying more on the indulgence of those I have the honor of addressing than on my own sagacity and policies.

Without attributing to all things a preponderance of natural or religious causes, I take it as an indisputable axiom that it is impossible for man to oppose the dispositions of heaven; the power of man may care to delay and oppose, but the original plan of the Almighty must ultimately perfect and accomplish itself. To deny this would be to deny the omnipotence of the Divinity.

When we cast our eyes on the country East of the Mississippi we find it of vast extension, varied in its climate, of excellent lands, the best in the New World, abounding in the most useful mines, minerals and metals: on making this examination the question naturally arises: For what purpose did the Father of the Universe create this country? Surely for the good of his creatures, for we are taught that he made nothing in vain. Does it not, therefore, strike the most limited intellect that he who closes the only gate by which the inhabitants of this extensive region may approach their neighbors in pursuit of useful intercourse, opposes this benevolent design? Is not the Mississippi this gate? The privation of its use takes away from us Americans what nature seems to have provided for their indispensable convenience and happiness. I will then say that the following questions must naturally occur to the Spanish Cabinet, and that its policies must be largely influenced by them.

First: Will we be able to perpetually resist in their designs on the navigation of the Mississippi, the Americans living West of the Apalachian Mountains, powerful as they already are, increasing in strength from day to day, and assisted by a respectable European Power?

Second: Will resistance for a few years recompense H. M. [His Majesty] for the expense incurred and may not that resistance produce to the Spanish Monarchy worst consequences than the loss of Louisiana?

Third: Will it not be preferable to attract these [American] Settlements by means of some concessions and accomodations, thus making them serve the interests of Spain, than to compel them, through hostilities and rigorous exactions, to throw themselves into the arms of Great Britain?

To answer the first question we must throw our sight on the respective situation of both countries; the American Settlements are situated in the forests of North America, and being near its center are defended on all sides by mountains and torrents that are impracticable to organized troops and will allow passage to only small bodies at a time: their situation alone protects them against any foreign invasion.

Louisiana is situated on the same waters that bathe the shores of American territories; it is a flat country, not protected by defiles or critical passes, and can only be defended by superior military forces: the Capital of the Province is 1500 miles away from the district of Kentucky, the lowest settlement on the Ohio River; How great is the disparity of circumstances between the two countries, from the military point of view! The American defended by the barriers of nature is absolutely inaccessible to any adequate force that may be sent to reduce him, at the same time he can instantly introduce into the very heart of Louisiana any corps of troops judged necessary, which can be easily made to subsist by means of the same channel by which they came down. Thus it is in his power to incommode and tire Louisiana, even with small parties, without these having to expose their wives and children and goods, and it cannot be doubted that a daring race of men, accustomed to war and familiarized with danger on account of their incessant hostilities with the savages, will not hesitate to expose their lives in a fight of so great moment to

themselves and their posterity. It will be useless to tell them that they have nothing to gain by taking Louisiana, for Spain is able to blockade the River with ships; they will reply: If we gain nothing, we will lose nothing, and at the same time we annoy the enemy we shall have imperiled our lives to obtain freedom from the hardship that oppresses us, and having made the experiment, and in so doing exposed ourselves to the consequences, in case of an unfortunate ending we can always go back to our homes in the same conditions we left them, satisfied that we have done our duty. I imagine that I do not exceed the limits of probability when I presume that well equipped men, with arms, ammunitions and provisions, commanded by old and experienced officers, taking advantage of their situation and superiority in numbers, will be able to possess themselves of Louisiana in a very few years, as against any force Spain can send.

Replying to the second question, it must be admitted that a respectable force can protect Louisiana for a few years and prevent the Navigation of the Mississippi, to which end I believe it would require ten thousand veteran troops, well distributed and ably commanded. This corps will have to be maintained at an expense to the Crown considerably more than the revenues of the Province, and as the Americans multiply themselves, these troops must be increased, which will bring up the expenses to an impossible point; so that when Spain is exhausted of men and treasure, the Americans, like a detained torrent that has accumulated prodigious weight, will break all impediments, and desolating whatever they find in their path, sweep all resistance to the Gulf; there is another effect of the utmost importance to the Spanish nation, which the prohibition of the Mississippi may produce; the American Settlements abound with men accustomed to the life, habits and manner of warfare of the savages, who know how to procure their subsistence with their arms and thus find themselves continually prepared for war and hazardous undertakings; these men forced into idleness by not finding an outlet for the sale of the product of their labors, may be induced by a man of influence to any extreme of desperation; the silver of Mexico is an object of universal temptation, and I am sure that if those Americans cannot find it through the Mississippi they will endeavor to do so in that Kingdom through Illinois; how this can be done I am not sufficiently informed to determine, but I am assured that there are

several Frenchmen in Illinois who have gone to Mexico and back by the above route; let this be what it may, I am convinced that it can be done for it was proposed to me by various resolute men, should the above people find no other means.

The third question finds itself answered in what is said above; but in addition thereto it may be briefly observed that if Spain throws the Americans into the arms of Great Britain, she will at once risk Louisiana and successively the Mexican Provinces, and on the contrary, if she draws the Americans to her interests, she may immediately begin to enjoy a vast revenue from her connections or commerce, and establish a permanent barrier against Great Britain and the United States.

The affair finding itself in this condition, Dn. Diego de Gardoqui should without hesitation deny absolutely to Congress the navigation of the Mississippi, because if he negotiates a treaty by which the Americans have the right to the independent enjoyment of this navigation, the power that Spain now possesses over those settlements will be destroyed and *our* principal object will completely vanish, for this must be established on the basis that said districts will maintain themselves subordinated and will solicit the protection of that Power [Spain] which assures them this, their most precious privilege, and Spain will therefore very carefully preserve this right so as to use it in exchange for such advantages she may wish to obtain from the above mentioned Western Settlements.

The prohibition of commerce on the Mississippi to the Americans has been a very wise measure, the more so that it has reserved for Spain the power to confer this inestimable privilege (which she may freely give) to a people who, if they had enjoyed it without interruption, would not believe themselves compelled to any recognition.

The same policy must continue yet a while, with more rigor in its *general application*, but in order to conciliate and prepare the minds of the Western American, tolerance will be good politics in certain particular cases, offering it to a few parties of real influence. This conduct will make them partisans of Spain, and will flatter the people with hopes of a free and amicable commerce, and will prevent any insult or hostility. With these pretexts the steps of the withdrawal from the federative government to the negotiation with the Court of Spain will be natural and immediate.

Under the circumstances Spain should rest and with patience await the proposition of the Americans; but it appears absolutely indispensable that those who now govern this Province [Louisiana] should be fully authorized to act with the agent or agents [of Kentucky] who will come down to treat of the conjunction, which will facilitate and abreviate the affair; once the Americans have made the propositions, Spain will hold the game in the hollow of its hand, and, as undoubtedly more able heads than mine will direct it, it would be presumptious for me to venture an opinion now; therefore I will only say that I am at all times ready to give such assistance as I may and that I am sure that the negotiation may be conducted in such a manner as to assure Spain all the advantages it may desire without involving it in any dispute with the United States. Spain pretends [to be] and is owner of the navigation of the Mississippi, which it may concede to any part of the United States, under such conditions as her politics or inclinations suggest, and if this part [Kentucky] were to violate the federative pact or that of the Union to obtain the said grace, it is the violator, and not the Court of Spain, who is responsible to Congress, in which case Spain will remain silent and allow only the Americans to operate.

But if, through some circumstance at present unforseen and unhoped for, this brilliant plan should fail, I am decidedly of the opinion that the following political and defensive system will be of immediate benefit in securing the safety of Louisiana, and ultimately bring about the occurrence that we are discussing; at present there is only one regiment destined for service in Louisiana and her dependencies, and this corps finds itself divided into ten detachments situated in such a manner that they cannot reciprocally support one another promptly; these would be an easy prey for even a weak enemy and consequently cannot furnish the Province any considerable protection against attack, it being easy for an enemy to embark at Fort Pitt two thousand miles away, and be borne by the rapid current, and he himself give notice of his arrival on the embankments of the city.

To safeguard against this peril let us take advantage of the example of the European Nations and what reason commonly dictates: In Europe we find kingdoms, principalities and provinces, defended by fortifications and all their passes and frontiers occupied; so, if we wish to defend a house we begin by closing the door and there

we make the principal defense: the same maxims may be applied to Louisiana; defended by her Navy and the possession of the Gulf by a rugged coast and a country of difficult access, she has little fear from the outside, and can only be attacked from the interior through the Mississippi. Therefore, this is the critical point that Spain must overcome; a respectable post at a certain distance from her settlements situated below where the waters, by which the attacking parties would have to come down, flow into the Mississippi, would be close enough to support Illinois; besides, it would restrain any designs against Mexico, would prevent an inferior corps from going down into Louisiana and hold superior forces in check so as to give time for the Province to be placed in a better state of defense, and finally when compelled to retire, it could by a simple maneuver and the sacrifice of very few men assure its retreat. I speak as a soldier and politician when I say that Spain should take possession immediately; in accordance with strict military principles, it is necessary for the defense of the Province, and considered politically it is also necessary for any negotiation that would take place after between Spain and the Western Americans, the more the strength and independence of the military forces of the post, the more advantages the former will be able to extract from the latter.

The position for this Settlement must be selected with much precaution and discernment, for which reason, not knowing the country, I cannot venture to fix it; but I shall mention a place which attracted my attention when I came down by this river, and which is vulgarly called "L'Anse a la Graisse", situated 15 leagues from the mouth of the Ohio on the right bank of the Mississippi, where at present resides a tribe of Delaware Indians. I am informed that the territory is extensive, not subject to inundations, well adapted to agriculture and its climate very healthful.

The cost of the subsistence of this garrison should not be an obstacle, even though provisions are brought from Europe; but this will not be necessary as the American Settlements can surely and easily supply them for one real* sterling (English money) for each ration.

Once this post is established, Spain may with assurance, admit Americans into Louisiana and Florida, although I am of the opinion

* ½ Shilling.

that the former should be developed first on account of its preferable soil, and as the purpose of this policy is to alienate and banish American principles and connections, it will be an invariable rule not to concede residence to individuals who do not bring visible property or who do not present a sure bond, under the penalty of confiscation, that will respond for the faithful accomplishment of the oath, which oath shall be universally exacted; but as Religion depends upon faith and intimate conviction, the first Settlements should be left free and unfettered in this respect. The body may be conquered by suggestion, but the soul is invincible and becomes obstinate with oppression. The experience of centuries has demonstrated that persecution in religious matters has not obtained the desired end. Churches must be erected in these new Settlements at the expense of the public, with clergymen gifted with piety, forbearance and intelligence, who possess the English Language, who know the character and customs of the Settlers, not only to propogate the Holy Gospel, but also to educate the youth and prohibiting all other public cults, the first form and principles of the ancient Religion will be adopted. Nor must the civil and military jurisdiction be less strictly considered; men of peaceable temper and recognized talent, who speak English, and on occasion are able to sacrifice all idea of self-interest, must be chosen. An American under such an administration will look with indifference on the Government he may have abandoned and finding himself in the free enjoyment and sure possession of his property and safe from impositions, will become a partisan of Spain by the indissoluble links of interest and affection.

This plan, so beneficial as well as politic, will produce immediate consequences of the utmost importance to Spain, because the first who venture themselves by reporting back to their brethren they have left behind, on the suavity of the government, fertility of the territory, the advantages of markets, and above all the emigration from Kentucky and other American districts, being exempt from tribute, will be more rapid into Louisiana than it ever was from the Atlantic States into the said Western Country. This Province will flourish quickly in richness and strength and will become important to the Nation. To this end the same consideration that moves the United States to oppose the peopling of the Western Country will dictate

to Spain a contrary policy, because as she possesses the only outlet for exportation, when this vast country and fertile territory is peopled it will be capable of producing with only the commercial tax an income more positive and probably equal to that of South America.

Having unfolded these important points of *our* affair, it will not be improper, Gentlemen, for me to explain clearly at this point, to your Honors, the purpose of my voyage in order that you may duly inform your August Sovereign thereof.

Be it known to your Honors that the Notables of Kentucky, the place of my residence, chafing under the inconveniences and privations they suffer through the restrictions placed on its commerce, suggested and pleaded that I make this voyage in order to penetrate, if this were possible, the attitude of Spain toward their country and to discover, if this were practicable, whether it would be agreeable to open a negotiation, *to admit us under its protection as vassals*, with certain privileges in matters of religion and politics in accordance with the temper, and necessary to the welfare of the present generation. These privileges would have been specifically defined, and I would have brought my commission in writing from Kentucky (about to become a free and independent State) were it not that it continues to be subordinated to the republic of Virginia, but as I observed above that the people of this district, after they have organized their government will make their representation to the Court of Spain upon the subject which I have just mentioned, and as I am convinced that its happiness and the peace of Louisiana depend on the success of this petition, I will with the greatest satisfaction employ all my abilities to this end, so as to merit those considerations which my services may make me deserving of. If this proposition is admitted, I will be ready to receive instructions from the Government, and return to Kentucky by the shortest and surest route, and on the way I will establish a confidential correspondence near Congress that will regularly procure for me information as to all the measures that may in any way have relation with our affair. If in the reply which I may receive to this memorial my propositions are admitted, I shall on my return to Kentucky proceed with careful deliberation, take advantage of my personal consideration and political influence in order to familiarize the people with whom I live with and make popular among them the aims that constitute the purpose

of my present voyage, to which I have already fixed the sight of all that part that knows how to discern in this community, and I will bind myself to constantly send by confidential messenger, (who must be compensated for the perils and fatigue of the journey) exact accounts of the measures I may have adopted in this important business, the effect they produce as also of any procedure of Congress.

I hope, however, that no wrong will be surmised; if, at the same time I labor to further the work that may produce the agrandizement of Spain and the prosperity of thousands of souls, I should attempt to secure the stability and welfare of my own family. To this end, and in order to give the strongest proof and bond of the sincerity of my propositions, I beg to be allowed to send to a representative in this city who deals in negroes, cattle, tobacco, flour, bacon, tallow, fats and apples, the product of about fifty or sixty thousand dollars of principal in Kentucky, these articles to be sold for my account and the amount deposited with this government as a guarantee of my good conduct until the time we are advised of the success of our projects or that I may establish my residence in Louisiana.

Thus, Gentlemen, have I given to your Honors my opinion, prospects and purposes in an affair that I consider of the greatest importance to Louisiana, as also to the country in which I am now living: when I reflect that I have written this memorial with continuous interruptions, daily efforts and various other disadvantages, I know that it must be full of errors and imperfections. But in the midst of these painful reflections I comfort myself in thinking that I have the honor of addressing two gentlemen from whose candor and consideration I will experience the most ample protection.

After your Honors have duly examined these observations, they will be able to determine whether or no it will be useful to appoint an agent in Kentucky, and once this idea is approved your Honors will draw up the regulations necessary to the rendering of the more essential services to the Crown; it is clear that an agent in that country, without personal influence will be able to warn the government in time of any offensive action that could be attempted, a matter without doubt of the greatest importance, but I comprehend that it is not out of reason to conclude that a man of great popularity and political talents, co-operating with the causes above mentioned, *will be able to alienate the Western Americans from the United States,*

destroy the insiduous designs of Great Britain and throw those (Western Americans) into the arms of Spain.

I am certain of one thing, and that is, that I have respected the sacred truth of the facts I have established and that I have made use of my greatest faculties in digesting my speculations, but let it be permitted to me to observe here that the events that appear so probable and which I have anticipated in these pages, may possibly never be accomplished; in this case may I again be permitted to remark that I do not pretend infallibility in my judgment, nor can I be held responsible for the uncertainty and changes in human fortune. My understanding may err; but my heart can never deceive, and if the success does not correspond to our hopes, we may justly exclaim with the poet:

" * * * It does not pertain to mortals to be masters of success."

But we have done more, we have deserved it!

Before concluding, I beg the indulgence of being permitted to make a few other remarks. The interest of the inhabitants residing on the shores of the rivers that pour their waters into the Ohio being the same, their policy must in any event, and notwithstanding any temporary misunderstanding, be the same: for once the upper settlements see Kentucky flourish, enjoy peace and accumulate riches under the protection of Spain, they will find themselves impelled by the most powerful arguments that may be offered to the human intellect to embrace the policy that procured for Kentucky the referred to advantages. These districts extend themselves from the waters South of the Tennessee River up to the arms of the Northern Ohio for a distance of 500 miles more or less, situated west of the Apalachian Mountains and generally following their direction. It is not possible to assure the number of these large settlements, but I confine myself tightly within the truth when I say they contain 150,000 men capable of bearing arms.

Finally, Gentlemen, permit me to observe that it appears to me that the success of these propositions depends in a large measure on the following contingencies:

1st: The most inviolable secrecy, not only of the project but also of my name which is well known to Mr. Carmichael the American Charge d'Affaires at the Court of Madrid.

2nd: Of the continuation of Sr. de Miro in his present command, on account of the personal knowledge that both of us have formed, thus acquiring reciprocally a personal confidence that is essential to the negotiation, which would not be the case afterwards with his successor.

3rd: I am absolutely convinced that the appointment of D. Martin Navarro to be Minister to the American Government would be most advantageous for the promotion of the project. This gentleman, being near Congress, with the knowledge he possesses of this affair, would be able to take advantage of any occasion to further our aims, and through this means we would be able to establish direct communication from Congress to the western countries and from Louisiana to the Court.

Forgive the above remarks, prompted by the conviction of their usefulness, and by my zeal in the cause to which I have pledged myself. To you, Gentlemen, I have confided an affair of so important a nature that were it divulged it would destroy my fame and fortune forever; but I feel the greatest confidence in the discretion and silence of your Honors, and if in any event the project should be rejected by the Court, I must rely on the candor and high honor of a worthy Minister to bury all I have communicated in eternal forgetfulness.

Dn. Esteban Miro, Governor of Louisiana, and D. Martin Navarro, Intendant of the same.

WILKINSON'S EXPATRIATION DECLARATION

Declaration: Interest regulates the passions of Nations, as also those of individuals, and he who attributes a different motive to human affairs deceives himself or seeks to deceive others: although I sustain this great truth, I will not, however, deny that every man owes something to the land of his birth and in which he was educated. This something, no matter in what form it manifests itself, is founded on self-pride; for example, [an] Irishman in Spain, a Spaniard in France, a Frenchman in England, or an Englishman wherever he may find

himself, will glory in reciting the virtues and fame of his respective nation, and will be pained and angered at any manifestation of its misfortune or dishonor, but to affirm that an intelligent being, who is able to act freely, must like a plant take root to the place which by chance witnessed his birth, would be to dispose of the wisdom of Providence and condemn the universal practice of the human race.

When a distinguished person intends to expatriate himself, he should proceed with caution and circumspection, weigh carefully the obligations that subsist between himself and his country, see whether he is bound by some link of public confidence positive or implied; he should consider that this course will wound the self-pride of those he is about to abandon, and as a consequence will expose all his life and actions to the severest scrutiny, and his reputation and character to the blows and jibes of gossip and calumny: profoundly impressed by these important truths, leaving apart all passion and prejudice, I appeal to the intelligence which God's bounty has given men, and have matured my decision in accordance with the dictates of reason, honor and conscience.

Possessed of these principles and adopting this opinion, I hope that it may never be said of me, with justice, that in changing my allegiance from the United States of America to H. C. M., I have broken any of the laws of nature or of nations, nor of honor and conscience.

Born and educated in America, I embraced its cause in the last revolution, and remained throughout faithful to its interest, until its triumph over its enemies: This occurrence has now rendered my services useless, discharged me of my pledge, dissolved my obligations, even those of nature, and left me at liberty, after having fought for her happiness, to seek my own; circumstances and the policies of the United States having made it impossible for me to obtain this desired end under its Government, I am resolved to seek it in Spain, where I trust that my conduct shall be directed by such principles of loyalty and justice in my relations with my fellow-citizens as to assure the tranquility of my conscience and that my name be handed intact to posterity.

Thus, not only the respect for my own reputation, which I love infinitely more than life, but also that which I profess for you Gentlemen, to whom I have the honor of, addressing myself, have induced

me to suppose that in any event of my future career I may depend on you as depositaries of my honor, to give testimony that my principles and the motives which prompted my conduct are the good of the country in which I live and the interest and aggrandizement of the Spanish Monarchy: in faith of which I sign herewith on the 22nd day of August, in the year of our Lord 1787.

James Wilkinson.

Certificate: New Orleans, February 15, 1908. The foregoing are true copies of the originals that remain in the care of Dn. Miguel de Pontalba, Senlis, France, to which I refer and with which they have been compared: in faith of which I sign herewith and on the day and month supra.

J. W. Cruzat.

POLITICAL TRANSACTIONS

IN AND CONCERNING

KENTUCKY,

FROM THE FIRST SETTLEMENT THEREOF,

UNTIL IT BECAME AN INDEPENDENT STATE, IN JUNE,

1792.

By WILLIAM LITTELL, Esq.

FRANKFORT, (K)

FROM THE PRESS OF

WILLIAM HUNTER,

PRINTER TO THE COMMONWEALTH.

1806.

PREFACE.

THE early history of every ancient country is veiled in fiction and enveloped in darkness, mankind were necessarily ignorant and naturally superstitious; and in looking back through the condenscent gloom of departed days, to ages remote in time and variant in manners, the imagination transformed every man of superior activity into a God or a Devil.

But the dark night of ignorance and superstition has passed away, probably never more to return. The art of printing has afforded the means of rescuing from oblivion every transaction worthy to be remembered, while the gradual relaxation of arbitrary governments, and the establishment of those absolutely free, have in most instances permitted their publication while the facts alledged were recent, while the evidence was in existence, and the matter accessible to examination, to confirmation if true, and to detection if false.

But although we are in no danger of being assailed by an host of Gods and Heroes, or attacked by a band of Giants and Genii, yet malice and revenge are the deleterious growth of every age. Disappointed ambition and detected villainy have learned to travel back to times half veiled in antiquity; the transactions of which were but little known, or have since faded from the popular memory; and by accusations boldly made, resolutely persisted in, and from the nature of things not easily disproved, to attack reputations unspotted with a crime in private or public life. Thus the affair of Carter's mountain after a lapse of more than twenty years, has lately been brought in accusation against a man whose capacity, attainments, and active benevolence have never been exceeded, perhaps never equalled in any of the human race;—and in the heart of Kentucky a faction has lately been organized for the determinate purpose of consigning to

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In this reprint of William Littell's *Political Transactions* and George Nicholas' *Letter* the original print is followed. No corrections or changes are made other than in the figures noted on pages 18, 35, 51, 79 and 89, and in the supplementing of the reprint page numbers, in brackets, for the original page numbers.

OTTO A. ROTHERT, *Secretary of The Filson Club.*

infamy every citizen on whose talents and integrity the people have habitually reposed confidence. In the stale calumny against the philosopher of Virginia, and those recently revived against the early patriots of Kentucky, there is this remarkable coincidence, both were the slanders of an ancient day, both were then canvassed, and in both cases the accused were acquitted by a contemporaneous decision. Yet after so many years the same slanders have been revived with an aggravating accession of falsehood and folly, and every fact which then did and now would justify the accused, is impudently denied or cautiously kept out of view.

It may seem strange that the calumnies lately propagated in Kentucky should under such circumstances receive countenance or support, but the fact may be readily accounted for on the ordinary motives which influence human actions. No set of men have ever attained elevated stations in a popular government without more or less competition. Those who have been once their rivals, and have fallen into subordinate stations, or taken refuge in obscurity, seldom forget the pains attending a conflict, or the mortification consequent on a defeat. Few of these men will hesitate to give currency to any plausible slander propagated against their ancient rivals, notwithstanding they themselves may know it to be false.

Another class of our citizens who will take no pains to contradict it, are those aspiring men who are in fact or fancy possessed of considerable talents. From the obloquy cast on the first officers in the commonwealth, such men infer a probability of shortly filling the most elevated stations themselves.

From these considerations and others similar have the abettors of this antiquated calumny been encouraged to revive it at the present time, and from circumstances *only* have they been enabled to give it that currency which could render a defence eligible, or a refutation necessary. To refute as far as an accusation of this kind can from the nature of things be refuted, is the object of the writer in the following pages. This will be attempted, not so much by argument as by a plain unvarnished tale, corroborated in every particular by testimony of the most conclusive kind.

In executing this work, the author is not to be considered as an historian. The object in view could not have been effected by a mere history. It was necessary that the *evidence* should accompany the *statement*, that the materials out of which the narrative was composed

should go forth with the narrative itself, that the people might examine how far the assertions were supported by testimony, and judge and decide for themselves. What conclusions the honest impartial reader will draw, he has already anticipated, and from those of an opposite character he has long known what he had to expect.

THE AUTHOR.

NARRATIVE, &c.

CHAPTER I.

A Brief Account of the Situation of the People in Kentucky, Prior to November, 1784.

From the first settlement of Kentucky, till the adoption of the preliminary articles of peace, the people resided mostly in stations. General George Rogers Clarke, with high military talents, an immense personal influence, and a particular appointment under the commonwealth of Virginia, protected the infant settlement, and directed its military operations. General Clarke brought with him but a small force from the eastern parts of Virginia; but he had authority to collect a considerable one in the western country, and to organize it on a plan adapted to the service to which it was destined. But independent of this, requisitions were sometimes made on the ordinary militia, to serve on those short campaigns, which went by the name of expeditions. Such requisitions were complied with without reluctance; and no enquiry was made whether the authority was delegated from government, or assumed by the officer. The people were convinced that such a power was necessary, and if it was not legal, it ought to be so. Private property was likewise frequently taken for the service of the public, when perhaps the necessity of the case was the only justification which could have been offered.

It must be remembered, that during the whole of this period the American states were in conflict with the British nation for their liberty and existence. That the Indian nations were the allies of Britain; and consequently not merely the enemies of Kentucky, but the enemies of all America.—Hence it was a part of the general system of warfare to keep up a military establishment of some magnitude in Kentucky or its vicinity. But as soon as any decisive measures of this kind were adopted by America, plans for defeating them were projected by England. I will mention one, which is very little known, and which will at once shew the importance which Britain attached to the acquisition of Kentucky; and display the character of a departed

patriot and hero, in its genuine colours.—Colonel [afterwards General] Benjamin Logan, was next to General Clarke in military authority—second only to him in personal influence, and second perhaps to none in the peculiar military talents, which the defence of this country at that time required. In the year 1777, the population of the country was contained in four stations, of which St. Asaph's (Logan's station, now in Lincoln county) was one. The people relied on hunting alone for a subsistence; and even this could not be done in the day time; for the Indians were perpetually on the watch to murder every one who should venture out. They had to steal out cautiously in the night; go to some place where buffaloes or other wild beasts were known to resort; kill some, and hide themselves during the day, and the next night return with the meat to the station. During this period, a man ventured early one morning to open the gate of Logan's station and step out—he was immediately shot dead. An Indian, or probably some British savage habited as an Indian, ran forward, took off his scalp, laid a bundle of papers on his breast, and escaped. The dead man was brought into the station; and Col. Logan took the papers: as soon as he had an opportunity of examining them, which he did entirely alone, he found them to be a bundle of proclamations from Sir Guy Carleton, then commander in chief of the British forces in Canada, since Lord Dorchester and governor of the same province. These proclamations were directed to the people of Kentucky, *generally*, and to Clarke and Logan *by name*. They stated that his Britannic majesty sympathized in their distresses; that compleat and swift destruction must be the inevitable consequence of a persistence in their delusion; that except the British, no earthly power could protect them: But if they would only return to their allegiance, all the Indian nations should be withdrawn; every tribe should become friendly; universal protection should be given; and all officers in the militia should be taken into British pay, on the same rank which they then held under the state government. Col. Logan carefully hid these proclamations, and it is believed never mentioned their contents or even their existence, until many years afterwards, until such a state of things was brought about, as would render the communication unproductive of any influence.

I have said that during the war the Indians were the enemies of America at large. When peace was concluded, the situation of the western people, instead of being ameliorated, was rendered worse.—

The Indians, it is true, as the allies of Britain, had no pretensions to continue hostilities after their principal had acknowledged herself satisfied, and made peace. But they never had an adequate conception of the nature and consequences of the contest. *They* had never been conquered by the Americans, and could not understand how they could have been subdued in consequence of the Americans obtaining an advantage over the British in the eastern part of the continent, when they were daily making conquests in the west. They could not comprehend how they were subdued abroad by proxy, at the same time that they were conquerors at home in fact. But not only was their military pride wounded by this doctrine; their interest was vitally affected. They had never considered England as the proprietor of their country. Yet, under the treaty, America claimed it as ceded to them by Britain, and required from the Indians an acknowledgment of their right; which acknowledgment was once extorted from them, as may be seen in the treaty with the Shawanese, made at Miama in 1786, section 2d. though with the extremest reluctance on their part, and even with tears. This claim produced in the minds of the Indians a spirit of indignant resentment and desperate hostility towards the Americans, which no exertions of Great Britain could probably have ever affected. Hence the termination of the general conflict was a new æra in the war between the Indians and the exposed frontiers of America.

But the government, inattentive to these matters, and thoughtlessly or obstinately disregarding the consequences which must necessarily result, not only withdrew all efficient military force from the district; but left it destitute of any legal authority to put its own inherent strength into action. The fact is in short, that the governments of Virginia and of the United States, seemed resolved to consider the Indians as friends; to permit no offensive measures to be taken against them, and to make no provision for defensive ones. Hence by the treaty of peace the Indians, instead of being the enemies of *America at large*, as they had hitherto been, became the enemies of the western country *alone*.—This conduct of the eastern toward the western part of America may be accounted for, partly from delusion and partly from worse motives. The people of the Atlantic states, had, as they supposed, a considerable knowledge of the Indian national character: but their ideas were drawn from an acquaintance with savages under different circumstances, and impelled by motives variant from those

which actuated the savages with whom western Virginia had to conflict. The Indians originally inhabiting the eastern states, whose affection the early settlers of those countries found it no difficult matter to conciliate, and retain, were but feebly or not at all acted on by any adverse & extrinsic influence. No European nation for any length of time, or in any considerable degree, made it their interest to be hostile to their civilized neighbours. Hence it became comparatively an easy matter for these states to make it the interest of the savages to continue peaceable towards them. But the case was far different with the savages of the western country; they had for the space of eight years been under the energetic influence of the British nation, they had been flattered, allured, urged and impelled to acts of inhumanity and barbarity, by every motive which could influence the savage heart, and by every artifice which diabolical ingenuity & address could devise; their innate delight in cruelty had been cherished, nurtured and wrought up into an internal enthusiasm. Their avarice had been gratified by profusion—every detestable quality which they possessed from nature or habit, had been cultivated with unremitting assiduity, and every spark of humanity extinguished. Thus qualified for their destined employment; they had been formally hired by the job, yearafter year, to inflict agony and torture, death and destruction, on the unfortunate inhabitants of the American frontier. Yet the people of the eastern states saw, or pretended to see, no difference between this description of savages and the comparatively humane and virtuous nations who were formerly the aboriginees of their country. Add to this, that the brilliant sophistries of Jean Jaques Rosseau, on the mighty virtues of savage man, had then found their way to America, and had their influence in prejudicing some of our citizens in favour of the Indian nations. But a cause probably more operative than any of these, might be found in the jealousy and envy of the eastern people against the rising consequence of the western country. They had seen that country constantly encreasing in population under all the circumstances of discouragement and distress to which man could be subjected; and asked themselves with fearful apprehension, what will be the consequences if no obstacle shall exist to prevent emigration, and no danger attend the emigrant.

By these and similar motives, were the people of the east induced to leave the people of Kentucky unprotected and defenceless, in an *abstract technical* state of peace, although in an *actual* state of war.

But about the time the regular troops were withdrawn such a state of things was produced by a chain of concurring circumstances as rendered their presence or the presence of some effective military authority more than ever requisite. Some arbitrary impressments towards the close of the war had excited great discontent; those immediately interested began to search for the law which authorised it, and in this search the want of any effective military authority any where in the district was discovered. It was discovered that the people when called on by their officers to go on an expedition, had an election either to go or stay, that when a requisition was made for provision, the man on whom it was made, had his choice either to give it to the public or eat it himself; and at the same time that want of legal authority in the officers to effect a compulsory expedition, was discovered, the motives which might have produced a voluntary one ceased in the men.

Many indeed of their most intrepid leaders and companions were numbered with the dead; others overpowered with excessive fatigues and deprivations, which human nature was not formed to sustain, had lost all energy, both of body and mind.—Add to this, that on the first prospect of peace, many families had moved out from stations in which they had hitherto resided, and were attempting to cultivate farms. While attached to stations, they had been allured into expeditions by a propensity to activity inseparable from man, and were deterred by no considerations but those of a personal nature; as a party of men deemed adequate to the defence of each garrison, were always left to protect the women and children, and cultivate the adjoining land. But the case was now different: if the head of a family went on an expedition, he left his wife and children unprotected in the wilderness. He not only ran the risque of losing his own life on the campaign, but they were subjected to the hazard of being murdered, or of being taken prisoners and burnt to death in his absence. But if both should survive and meet again; yet, as few exertions for a livelihood could be made while he was away, it might be only to die of hunger together on his return. Their situation precluded the possibility of procuring the necessaries of life from abroad, and money was utterly wanting, if it had been otherwise practicable. For these they had to rely wholly on their own exertions in their own country. In this they were indeed independent.

But the neglected & forlorn situation in which they now found themselves, was of itself sufficient to damp any military ardour. They had hitherto fought in a cause common, as they supposed, to all America—they had rejoiced in the success and sympathized in the distress of their fellow-citizens in every part of the union. The termination of the general conflict they had often anticipated with alternate transport and alarm, as an event which was to crown the wishes or seal the doom of all. That event had now taken place; it had terminated favourably—but not to them. Peace had been proclaimed—but not to them. They were left in a situation far disjoined from all the civilized world, singly & alone, to combat an enemy formidable to united America; an enemy bound by no moral ties, influenced by no human feelings, on whose heart no hold could be taken, on whose professions no confidence could be reposed, treacherous in peace, tremendous in war, and diabolical in revenge. Yet an enemy which might and would, through the influence of England, have been their friend, had it not been for their attachment to the common cause. And that nothing might be wanting to make distress distraction, their former companions in the conflict, as soon as they had procured safety to themselves, began to display a cruel and mortifying partiality in favour of those who had lately been the common enemies of both.

Such was the situation of this country twenty-two years ago. In this situation the people became politicians from necessity, not from choice. In this situation they commenced those public consultations, discussions and political transactions, which terminated in the ultimate independence of their country. These will be the subject of the following chapters.

CHAPTER II.

The People of Kentucky apply to the Government of Virginia for leave to form a New State, and Obtain the Passage of a Law on that Subject.

In 1784, there were only three counties in Kentucky, viz. Fayette, Jefferson and Lincoln. Lincoln county comprized in its limits the present county of Lincoln, and the now counties of Mercer, Madison, Garrard, Logan, Warren, Christian, and several others. Col. Benjamin Logan then held the first military appointment in that

county, under the title of County Lieutenant. In the November of this year, he received intelligence from the Cherokees, that some hostile tribes meditated and were preparing for the invasion of Kentucky. It may be proper here to mention, that this project was afterwards abandoned by the Indians, nothing having been done in pursuance of it, except the murder of a few emigrants on the wilderness road. But the intelligence as received by Col. Logan was sufficiently menacing to authorize the most vigorous measures. He therefore convened a number of the inhabitants of the district at Danville, which was then the principal town in Kentucky, and communicated to them the information he had received. To them as well as him it seemed to demand the immediate undertaking of an expedition. But from adopting such a measure they were prevented by difficulties utterly insurmountable. No man or set of men in the district were invested with authority to call the militia into service. Ammunition adequate to the expedition deemed necessary, was not in the district: what was there was private property, and there existed no authority to purchase on the behalf of government—no funds to pay for it, and no power to take it for the public use. There was the same want of power as to procuring provisions; and if the militia would have served voluntarily, and could have furnished themselves with arms, ammunition, and every thing necessary, no person was authorized to assure them that government would ever pay them for their services, or ever reimburse their expenditures; for as it would be an expedition unwarranted by law, government might thereafter construe it as an act of merit or criminality, as sympathy might dictate or prejudice suggest.

In this crisis of anarchy within and hostility without, the citizens convened at Danville, recommended to the people at large to elect one representative from each militia company in the district, to meet in the ensuing month at that place, to devise if possible some means of preserving their country from that immediate destruction which seemed then impending.

The measure thus recommended was adopted. Elections were held; and the persons elected convened at the time and place appointed; and after deliberating on the state of the country for about ten days, resolved, that many of the inconveniences under which they laboured might be removed by the legislature of Virginia. But that the great and substantial evils to which they were subjected, arose

from causes beyond the power or control of that government, viz. from their remote and detached situation, and could never be redressed until the district had a government of its own. The constitution of Virginia had made provision for the erection of one or more governments in the western territory, when occasion might require.

In pursuance of the above resolution, the convention recommended the election of members in every county, to meet in another convention to be held at the same place on the 23d. of May following, [1785] whose deliberations were to be directed peculiarly to the propriety of making application to the legislature of Virginia, for permission to become an independent state. The time fixed on for holding these elections, was the court days in the month of April, as this was likewise the legal election day for members of assembly. It was considered that the people would be generally collected, receive full information of the question to be discussed, and be completely represented in the convention.

Previous to the time of holding this election, Nelson county was formed out of Jefferson. Members were elected pursuant to the recommendation, who met in Danville at the time appointed; and on the ninth day of their deliberations, resolved *unanimously*, that a petition ought to be presented to the General Assembly of Virginia, stating the inconveniences under which the people laboured, from their local situation, with a request for permission to separate and become an independent state, *and a member of the confederated states of America.* (*For this vide Appendix No. 1.*) [*Page 61.*]

At this time there was no printing office west of the Alleghany mountain. But to give the people every possible information as to the views and proceedings of the convention, their clerk was directed to transmit to the office of each county court, a copy of the petition draughted to the legislature of Virginia, with directions to fix them up at the court-house doors. The convention likewise draughted an address to the people of the district, stating pretty much in detail the reasons and motives of their proceedings; and that decisive measures might not be pursued on a subject of such magnitude and importance, without the fullest information, best deliberation, and united concurrence of the people, they recommended an election in the ensuing July, of another convention, to meet at the same place in the August following, to *reconsider* the question respecting a separation from the parent state. Copies of this address & recommendation were in like

manner transmitted to the officers of the county courts. The number of members to be elected from the respective counties were fixed as follows: from Fayette eight—from Lincoln ten—from Nelson six, and six from Jefferson. (*Vide Appendix No. 2.*) [*Page 61.*]

On the eighth day of August this convention assembled, and after having deliberately examined and discussed the matter submitted to their consideration, agreed *unanimously* in the propriety of separating from Virginia. Twenty-six members were present when this decision was given; and the reasons which produced it are set forth in *Appendix No. 3.* [*Page 66.*]

A memorial on the subject to the Assembly of Virginia, was draughted and agreed to; and to impress that body with a due sense of the importance which the convention attached to the measure, it was deemed advisable to appoint two commissioners to wait on the general assembly with the memorial. To this office the Hon. George Muter, then chief justice of the district, and now of the state of Kentucky, and Harry Innes, then attorney general of the district, were appointed by an unanimous vote of the convention. (*Vide Appendix No. 4.*) [*Page 68.*]

During this year [1785] frequent intelligence was received of the hostile designs, machinations, and warlike preparations of the Indians, but they were not *actually* very troublesome. To the nations north of the Ohio, overtures of peace had been made by the general government, and Gen. Clarke, with General Parsons from New-England, and General Butler from Pennsylvania attended as commissioners at the mouth of the Great Miami, in September or October, but they were met by no tribe except the Shawanese, and even as to them the meeting answered no beneficial purpose. It is true that they entered into a treaty in the January following, but did it in such a manner as afforded no reason to believe that they would abide by it, and their future conduct confirmed the apprehensions then entertained. General Butler was agent in behalf of the United States for Indian affairs, and as a Pennsylvanian had no favourable impression of the Virginia character. General Parsons in all probability, had no small share of that strong aversion which his countrymen have uniformly manifested towards the people of Virginia. Certain it is that they both entertained great prejudices against the Kentuckians, and General Butler represented them to congress as the aggressors; and fostered the sentiment then but too readily entertained by that body, that to the

white people of the western country, and not to the Indians, ought the continuation of hostilities to be imputed.

Some intelligence had been lately received from Vincennes, which in the opinion of the convention rendered it necessary for them to address the people on the subject of Indian affairs. This address the members undertook to promulgate, and from that and the two resolutions which were immediately entered into, the reader will judge of the apprehensions then entertained.—*Vide appendix No. 5.* [*Page 71.*]

The commissioners appointed to present the memorial of the convention to the legislature of Virginia attended at Richmond in November, presented and supported it, and procured the passage of the "act concerning the erection of Kentucky into an independent state."—This act authorized the people of the district in the month of August 1786, on the respective court days of the counties at the court houses, to elect representatives to compose a convention, to be held at Danville on the Fourth Monday in September, according to the proportions therein specified, and as soon as two thirds of the members elected should convene, they were directed to consider, and by a majority of votes to determine whether it be expedient for, and the will of the good people of the said district, that the same be erected into an independent state on the terms and conditions specified in said act.—*Vide appendix No. 6.* [*Page 72.*]

The temperate perseverance, patience, and moderation with which these matters were conducted, I am convinced equals any thing which the reader could be prepared to expect. The repeated considerations and reconsiderations had on the subject—the efforts which were made to communicate information to the populace, and to obtain their deliberate consent, display the genuine characters of those who took the lead in this business. The transactions speak for themselves, and require neither apology or comment.

CHAPTER III.

Virginia Repeals the Law Authorising a Separation.

In the spring of the year 1786, the Indians on the north side of the Ohio became very troublesome to the people of Kentucky. Representations were made on the subject to the executive of Virginia

and an answer to the following effect was received from Governor Henry, viz: That he had addressed congress on the business, and urged the adoption of such measures as might ensure protection to the district. This was his *public* answer. But he informed the county lieutenant of Lincoln, Colonel Benjamin Logan, in a *private* letter that congress had paid no attention to his representation. In consequence of which he had again called their attention to the subject, and had demanded of that body a categorical answer to the following question, "*Will you give the people of Kentucky protection?*"

The obstinate inattention of congress to these representations induced the executive of Virginia to give some very general directions to the county lieutenants of the district. Under these instructions two expeditions were carried on against the Indians north of the Ohio, one under the command of General Clarke against the Wabash tribes, and the other by Col. Benjamin Logan against the Shawanese.

In the month of August elections were held in the several counties conformably to the act of separation; and a number of the members convened at Danville on the day appointed in that law. But so many of the members had marched with the two armies, that a number sufficient to proceed to business could not be had.

On the 26th day of September the members present formed themselves into a committee, prepared a memorial to the legislature of Virginia, stating the reason why the convention could not proceed to business, & requesting that some alterations might be made in the act of separation, and after appointing John Marshall, the present chief justice of the United States to present the memorial, the committee was dissolved. But in order to prevent the extinction of the powers delegated to the convention, and the consequent delay of a separation, some members with the clerk attended regularly and adjourned from day to day until some time in January 1787. At this time the members who had marched with the army having returned, a quorum was had, and the convention proceeded to business, and determined "*That it was expedient for, and the will of the good people of the district to separate from the state of Virginia, and become an independent state.*" But at this stage of the proceedings a letter was received by the president of the convention from a member of the assembly, enclosing an act repealing that law under which the convention were then acting, and authorising the people in the August following to elect another convention to be held at the same place in

September 1787. The reasons assigned for this measure were, first, That the time contemplated in the repealed act was not sufficient to enable congress to determine on proper deliberation as to the propriety of admitting the proposed state into the union.

Secondly, That twelve months had been given for purposes which could not now be complied with in that time.

Thirdly, That the people of the district were represented as being much divided respecting the propriety of a separation.—(*Vide appendix No. 7.*) [*Page 76.*]

Hitherto the question relative to a separation had been conducted with much coolness and moderation. But the disappointment and mortification produced by this conduct in the government of Virginia, strongly affected the public mind.

The people saw in this measure the much desired separation placed on the same footing in which it stood twelve months before. The object in view was now at least as remote as it appeared then, and might be more so, for the same legislature which had repealed the former law, might in the same stage of proceedings repeal the present, and pretences equally plausible for so doing could readily be found. But while the separation was postponed to an indefinite period the evils and inconveniencies which had suggested the necessity of it and produced the application for it, were hourly encreasing, and it was obvious must continue to encrease.

The members of the convention solicitous to soothe the popular mind, and preserve peace in the country, discontinued their deliberations, and returned to their respective counties. But they were far from being satisfied with the defeat of a measure on which they were convinced that the prosperity and probably the existence of their country eminently depended.

Sometime in the March of this year (1787) a communication was made from a corresponding committee in the western part of Pennsylvania to the people of Kentucky, informing them that John Jay, the American minister for foreign affairs had made a proposition to Don Gardoque, the Spanish minister, to cede the navigation of the Mississippi to Spain, for twenty-five or thirty years, in consideration of some commercial advantages to be granted to the United States; but advantages from which the people of the western country could never derive any benefit. It will not be supposed that this information tended to soothe the minds of a people already labouring under

innumerable inconveniencies, and deprivations, neglected by the general government, and tantalized by their own. It was evident that this measure had nothing less in view than the absolute sacrifice of every interest of the western countries, to promote the prosperity of the eastern states. But if the thing did not speak for itself some members of congress spoke sufficiently explicit for it; one in particular from Massachusetts, who held an high rank in political life, and possessed the confidence of government in an eminent degree, had declared on the floor of congress, that it would give him real pleasure to see the ocean wash the western foot of the Alleghany hills. And the account of the proposition was accompanied with information that seven states approved it. This intelligence was received at Danville during the session of the Supreme Court for the district, where a considerable number of people were attending. They took the matter into immediate consideration and appointed a committee to communicate the information to the people at large, and recommended to them to elect five representatives from each county, to meet at Danville in the May following, and take into consideration the proposed cession of the Mississippi. Several members elected in consequence of this recommendation, attended at Danville on the day appointed, and after a conference of several days, adjourned without adopting any measures respecting the matter. The reason was because they learned that the legislature of Virginia had entered into several resolutions on the subject, expressed in strong language, and had instructed her delegates in congress to oppose the cession.—(*Vide appendix No.* †32.) [*Page 77.*]

But the defeat of the object they had nearest at heart, by the legislature of Virginia, and the dismal prospect held out to them by Jay's projected treaty, were only a part of the troubles of the people of Kentucky at this time. In the spring of this year, the Indians infested and seemed likely to overrun the whole country. Great depredations were committed in almost every quarter. Congress, tho' repeatedly urged by the executive of Virginia, pertinaciously refused to afford the people any protection, and without assigning any reason for the measure, disbanded the troops which had apparently been raised for that purpose. (*Vide Appendix No. 9.*) [*Page 80.*] And the executive of Virginia now censured the officers who had projected and conducted the two expeditions mentioned in the last chapter, as

†Should read 8.

conducted by General Clarke and Col. Logan, in consequence of orders received from the executive. But to render their situation still more distressing, the Cherokees, who in 1785 had entered into a treaty with Congress, now commenced hostilities. A party of that tribe came to Fishing Creek, in Lincoln county, and murdered a man of the name of Litterrell. Information was given to Col. John Logan, then second in command in that county, and at present Treasurer of Kentucky. He embodied some of the militia, went with them to the house where the murder had been committed, and near it discovered the route which the Indians had taken. He pursued them several days; crossing the Cumberland river into the Indian territory, the party were overtaken, several of them killed, a quantity of skins & furs & all their horses taken. Those of this party of Indians who escaped, attempted to avail themselves of the treaty, by complaining to the Indian agent that the people of Kentucky had intruded on their hunting ground, and murdered some of their peaceable hunters, The agent communicated this complaint to the executive of Virginia, and the governor thereupon directed the attorney general of the district to "*institute the proper legal inquiries for vindicating the infraction of the treaty.*" This vague and indefinite direction the attorney general refused to act under, and no further direction was given. The people were conscious of their innocence in all matters relating to the Indians, and extremely exasperated on receiving intelligence of the instructions to prosecute; as they were directly intended to stigmatize a highly meritorious officer, for doing what the laws of nature and God required of him. (*Vide Appendix No. 10.*) [*Page 80.*]

CHAPTER IV.

The Origin of the Mississippi Project.

From scenes of encreasing embarrassment and accumulating distress, I will now relieve the reader, by turning his attention to the origin of the negociation relative to the cession of the Mississippi. It is connected with the subject of this narrative—is curious, but little known, and may be instructive and amusing. After the declaration of American independence, application was made to the court of Spain, to acknowledge the United States as an independent nation,

and treat them as such. But that government, foreseeing that the independence of those states might prove prejudicial to her colonies, refused. At a particular period of the war; when the southern states were overrun by the British—the governments of Georgia and South Carolina prostrated, and all resistance at an end; when North Carolina could make but a feeble and ineffective opposition—when the British forces were embodied in the heart of Virginia, the finances of the government exhausted, and France weary of the war and wishing for peace: at this period of desperation it was suggested that if the Mississippi should be relinquished to Spain, it might remove her jealousies; induce her to acknowledge our independence, and prove the basis of a treaty under which we might avail ourselves of her assistance. Upon this suggestion the legislature of Virginia passed a resolution, recommending its relinquishment; and Congress passed an act authorizing the American minister at the Spanish court to cede it, on condition that Spain would acknowledge our independence, and exert herself in support of it. But no such treaty was made, and Spain seemed to set no value on the right which was proposed to be relinquished in her favour and never until the close of the war acknowledged our independence. As soon as the war terminated, the power to make such treaty was revoked and the resolution on which it was predicated was rescinded.

Some time after this, Spain sent a minister to the United States (having now acknowledged their independence) to have the boundaries of her claims and ours settled by treaty. She now claimed in her own original right the exclusive navigation of the Mississippi, and by an extension of West Florida northwardly, about half the state of Georgia and a large part of the state of Kentucky. John Jay, the then minister for foreign affairs, was authorized by special commission to make a treaty adjusting and settling this question; but even this special commission was so restricted as to prohibit him from relinquishing our right to the Mississippi *on any consideration whatever.*

After about 10 months spent in this negociation, the American minister wrote a letter to congress, stating that difficulties had arisen, which in his opinion should be so managed, that even their existence should remain a secret for the present; and therefore proposed that a committee should be appointed to direct and instruct him in every case relative to the proposed treaty. After considerable debate about appointing a committee, the minister was called before congress

itself, and directed to explain the difficulties which he had mentioned. It now appeared that instead of adjusting the boundaries of land, which his commission had confined him to, he had been planning a project of a commercial treaty, which he strongly urged congress to adopt, and invest him with authority to carry into effect.—The features of the treaty were such as might be expected. Spain was to grant to the United States some commercial privileges, from which Jay's own state and the states of New-England, might derive advantages; and in consideration of this, all the interests and prospects of the western states were to be sacrificed by a relinquishment of the Mississippi for twenty-five or thirty years. Seven states voted for acceding to the minister's proposition. This was a majority; but here a constitutional question arose. By the confederation, the assent of nine states was requisite to enter into a treaty. Congress had hitherto considered the instructions to the minister as the basis of the treaty, and had required the assent of nine states to such instructions. That number had assented to the instructions already given to Jay; the *motion* now was to revoke one part of the instructions, and to vary the other; and the *question*, was whether this could be done by less than nine states, or whether if seven states could and would take off the restriction, the authority to make any treaty, would not be thereby repealed.—This question was debated at great length, and with much animosity; but the majority decided that they had a constitutional authority to unfetter the minister and vary his instructions. The minority protested, and entered their protest on the journals; and the vote and decision of the majority was transmitted to the minister for his instructions, and authority to enter into a treaty on the plan he had projected.

But happily about this time the question respecting the adopting of the present Federal Constitution engrossed the attention of all parties: in the magnitude of that, minor considerations were lost. The execution of the project was consequently delayed, and the project itself ultimately abandoned.

CHAPTER V.

THE DIFFICULTIES AND EMBARRASSMENTS OF THE KENTUCKIANS ENCREASE, AND ARE AGGRAVATED BY THE GOVERNMENT OF VIRGINIA.—THE GENERAL GOVERNMENT UNDERTAKES TO PROTECT KENTUCKY. VIRGINIA RENDERS HER EFFORTS ABORTIVE. KENTUCKY AGAIN PREPARES FOR A SEPARATION.

I NOW return to the affairs of Kentucky. Indian hostilities encreasing, the county lieutenants of Lincoln, Fayette and Jefferson had a meeting on the 17th day of May, and forwarded by express a memorial on the subject to the executive of Virginia. In June the executive returned for answer that he would forward to congress the letters and papers received from the county lieutenants; and for protection in the interval he ordered them to convene and adopt some mode of defence for the district. This might have been productive of some good had it not been accompanied with a positive injunction that the troops embodied for the purpose of defence should on no occasion go without the limits of the state except in immediate *pursuit* of an *invading* enemy. (*Vide appendix No. 11.*) [*Page 82.*]

As early as the year 1780 the people of Kentucky had discovered that the only effectual way of repelling attacks from Indians, was to obtain intelligence of their intended movements, and surprize or divert them by an expedition into their own country. This had been the settled mode of defence ever since; but independent of this, the directions of the executive were in the last degree preposterous and absurd. Kentucky exhibited a frontier of almost as many miles as there were people in it. To keep a perpetual watch on such a frontier would have been impracticable if every man in the district had been furnished with arms, ammunition, and provision, and had no other business to attend to.

By virtue of these orders the people were compelled to remain inactive even if they should know that a dozen nations of Indians were collecting and embodying themselves within five miles of their residence to wait until the Indians had collected and united all their strength, arranged their mode of attack, and made every possible provision therefor. But when the Indians thus embodied, organized and arrayed, had marched into their country, they were allowed the

privilege of driving them out—if they could. This restriction excited very unpleasant sensations in the public mind.

In consequence of the representations made by the executive to congress, that body on the 21st of July passed two resolutions professedly with a view of giving protection to this remote and afflicted country, but which were in reality merely an insult and mockery of their distress.

By the first resolution congress declared that it was their intention with the regular troops consisting of *one regiment* to give *effectual protection to the frontier inhabitants of Pennsylvania and Virginia, from the incursions and depredations of Indians, to prevent intrusions on the federal lands, and promote a favorable issue to the intended treaty.* The frontier proposed to be *effectually* protected with one regiment was 700 miles in length, and infested with Indians in its whole extent. One company and a half was to remain at Venango, Fort Pitt, and Fort M'Intosh, for the protection of the western part of Pennsylvania; these were between 3 and 4 hundred miles from the nearest settlements in Kentucky. One at Muskingum, about 150 miles lower down; one at the mouth of the Miami; three at Post St. Vincennes, 100 miles from the nearest part of Kentucky, and the remainder at the rapids of the Ohio. It is manifest that the primary object of this measure, was more hostile to the Whites than to the Indians; to prevent intrusion on the public lands, not to protect the people of Kentucky. All the troops except those at the falls of Ohio were stationed at such a distance from the then settled parts of the country as to be of no service to the people.

The second resolution requested the executive of Virginia to order the militia in the district of Kentucky to hold themselves in readiness to unite with the federal troops in such operations as the officer commanding the same might deem necessary for the protection of the frontiers; and that on the application of said commanding officer, one thousand of said militia should take such position as he should direct, for acting in conjunction with the federal troops against the hostile Indians.

This resolution might have been productive of great advantage, but the executive of Virginia restricted and embarrassed it in such a manner as to render it utterly nugatory. The governor enclosed the act of congress in a letter dated the 14th of August, to Col. Benjamin Logan, and directed that the "militia be in readiness at all times to

unite with the federal troops in such operations as the officer commanding them shall judge to be necessary. *You are not however* (continued he) *to consider yourself at liberty to embody any part of the militia for the purpose of carrying into execution the above mentioned act, until you receive official orders from the executive for that purpose."*— (*Vide appendix No. 12.*) [*Page 83.*]

Nothing could have been more preposterous and absurd than this order; the nearest county lieutenant in the district to the seat of government, was more than 500 miles distant, 200 of this was through a dangerous uninhabited wilderness, constantly infested with hostile Indians. If the officer commanding the federal troops should on any emergency want the co-operation of the militia, he must make a requisition on the county lieutenant, *he* must send a messenger through this wilderness to the governor of Virginia; if this messenger by accident (for it would indeed have been an accident,) escaped being murdered on the way, and reached the governor, *he* must call his council, and they decide the question whether the officer had in reality any occasion for the assistance of the militia, or whether the requisition originated in conceit, whim, or caprice; if they determined that the requisition was reasonable, the messenger might return alive, (if he could) convey the intelligence, and the county lieutenant begin to embody his troops; but by this time the white inhabitants might have been all massacred and putrified, or the Indians (if an attack was the object) have fled to Canada.

This conduct in the United States and in the executive of Virginia added to the large stock of melancholy experience which the people of Kentucky had already acquired, was sufficient to confirm them in a belief that all their hopes of happiness or safety, if not of existence itself, must depend on a separation from the parent state. They therefore proceeded under the second act of separation to elect members of a convention once more to decide on the propriety of a separation.

A majority of the members met at the time and place appointed, and proceeded to business. The two acts of separation, and the several papers already mentioned relative to the Indian affairs, were referred to a committee of the whole on the state of the district. After maturely considering the conditions imposed in the two acts of assembly, and all the calamities and inconveniencies resulting from local causes, the convention on the sixth day decided *nemine con-*

tradicente, "That it was expedient for, and the will of the good people of the district to be erected into an independent state, on the terms and conditions specified in the two acts of assembly." Conformable to this determination an address to congress was prepared requesting admission into the union as an independent state. This with the resolution respecting the expediency of a separation, and another resolution fixing on the 31st day of December 1788, as the period when the authority of Virginia over the proposed state should determine, were forwarded to the delegates in congress from Virginia; copies of the two resolutions were likewise transmitted to the executive of Virginia, to be by him laid before the general assembly; and that nothing might be wanting to ensure success to the measure, the president of the convention was directed to address the representatives from the district to the assembly, requesting them to use their best endeavours to have an inhabitant of the district appointed a delegate to congress.—(*Vide appendix No. 13.*) [*Page 84.*]

As the assent of Virginia to this measure had twice been obtained, as it was in itself reasonable, and as proper means had been adopted for impressing on the minds of congress the necessity and propriety of the measure; the convention calculated on the undoubted assent of that body to it; they therefore recommended to the people to elect representatives in the month of April following to meet at Danville on the fourth Monday in July 1788, to form a constitution for the proposed state. That full notice might be given of the time for holding these elections, the printer of the Kentucky Gazette was requested "to print the resolutions respecting the elections six weeks successively immediately preceding the time." The officers who were authorized to hold the elections were directed to continue them five days, and to cause the resolutions to be read each day before the opening of the polls at the court house door.—(*Vide appendix No. 14.*) [*Page 87.*]

CHAPTER VI.

THE PEOPLE OF KENTUCKY APPLY TO CONGRESS FOR ADMISSION INTO THE UNION, A VOTE OF APPROBATION IS GIVEN.—THE NEW FEDERAL CONSTITUTION IS ADOPTED.—THE APPLICATION OF KENTUCKY IS DEFEATED. SHE IS BESIEGED ON EVERY SIDE BY SAVAGES—IS DENIED PROTECTION, BUT CONGRESS RESOLVES TO PROTECT THE INDIANS.—ANOTHER CONVENTION IS CALLED.

THE legislature of Virginia desirous of manifesting to the people of Kentucky, a disposition to accelerate a separation so ardently wished for; at their November session, 1787, elected John Brown, Esq. then a senator in the state legislature for the district of Kentucky, a representative in congress. The address of the convention was presented to congress on the 29th day of February 1788, and referred to a committee of the whole. This committee on the 2d day of June following reported "That it was in their opinion expedient that the district of Kentucky should become an independent state," and thereupon a committee was appointed of one member from each state to prepare and report an act on the subject.

This committee from motives which will hereafter be explained, deferred reporting until the 2d day of June, when on their own request they were discharged without having done any thing. On the day after their discharge Mr. Brown made a motion to the following effect: After reciting the Virginia acts of separation and the resolutions of the conventions on the subject: "That the congress do ratify and confirm the compact entered into by the state of Virginia with the district of Kentucky, and that the said district be admitted into the union as an independent federal member, on the first day of January 1789, and be stiled the commonwealth of Kentucky; and that congress release Virginia from all federal obligations arising within said district after the first day of January 1789, and that the said district be admitted to a representation in congress, provided it contains sixty thousand inhabitants."

A motion was then made by Mr. Dana, a member from Massachusetts, to postpone the consideration of Mr. Brown's motion. This passed in the *affirmative*. Congress then entered into the following resolution:—"As the constitution of the United States is now ratified, congress think it unadvisable to adopt any other measure:

for admitting the district of Kentucky into the federal union; but thinking it expedient that the said district should become an independent state and a member of the union, as soon as convenience will permit, under the constitution, recommend it to the legislature of Virginia and the inhabitants of the district, to alter their acts and resolutions, so as to make them conformable to the provisions of the constitution."

During the pendency of this business before congress, the inhabitants of Kentucky had cherished the most sanguine hopes of success. Intelligence had been received that the committee of the whole had decided in favour of a separation, and that a committee had been appointed to draught an act for admission into the union. The people had considered this as an absolute determination, both as to the right and policy of the measure, and viewed all that was to come as mere formality. They consequently concluded that their safety and prosperity were settled on a basis firm and indubitable. In the meantime elections were held in the month of April, 1788, for a convention to form a constitution. The members elected met at Danville on the fourth Monday in July, with a view of entering on this task. But on that day and at that place, they had the mortification to receive the dispatches forwarded by the secretary of congress to the president of the convention, giving intelligence of the fate of the application to congress. The mortification and chagrin produced by this disappointment was intense. The submissive patience, the undeviating moderation and respect with which this great object had been pursued, was within the recollection of all. The dangers to which they were exposed, from a surrounding, ferocious and relentless enemy, were obvious to their view; and the disadvantages resulting from their local situation, were present to their feelings. Their request for the active interposition of government in their defence, had been obviated, and the natural right of exercising their own strength in defending themselves, had been constantly circumscribed, restrained and embarrassed. The disgraceful project of sacrificing their country to Eastern America, by relinquishing the Mississippi, had not yet been abandoned. Seven states had assented, and it might at any time be revived. The conduct of congress on the application of the district, manifested the existence of some sinister political design. From the time when their address was referred to a committee of the whole, nearly two months had elapsed before any

notice was taken of it; then one month more was occupied under pretence of draughting an act. No act, however, was draughted. The committee was discharged, and the business in effect threw out of the house.

What this design was, and the motives which produced it, had been explained by an eminent patriot of their own state. Col. Grayson, who was a member of Congress, when the Mississippi project was discussed, had told them that the language and policy of the eastern states had been and ever would be—"*Let us prevent any new states from arising in the western world, or they will out vote us; we will lose our importance, and become as nothing in the scale of nations. If we do not prevent it, our countrymen will remove to those places, instead of going to sea, and we will receive no particular tribute or advantage from them.*" Deb. Vir. Con. vol. II. Page 134.

This unforeseen and unexpected disaster, involved the members elected to form a convention, into great difficulties, but it was ultimately determined to convene and organize themselves into a deliberative body, and to take into consideration the proceedings of Congress. Several days were occupied in deliberating on the situation in which the district was placed. It was finally determined to recommend to the people the election of five representatives from each county, in the ensuing October, to meet in Danville on the first Monday in November following, and to delegate to these representatives full power "to take such measures for obtaining admission into the union, as a separate and independent state, and the navigation of the Mississippi river; and also to form a constitution of government for the district, and organize the same when they shall judge it necessary, or to do and accomplish whatever, on consideration of the state of the district, may in their opinion be necessary to promote its interests." To give sufficient notice of this measure, the printer of the Kentucky Gazette was requested to publish the resolutions which had been agreed to, until the first day of October, with which he complied; and to prevent surprize, the persons conducting the elections were requested to keep them open for five days, and to cause the resolutions to be read every day previous to opening the polls. (*Vide Appendix, No. 15.*) [*Page 88.*] It may be proper to mention that during the session of this convention, they entered into the following resolution:—That Col. M'Dowell, the President, wait on Mr. Brown, when he shall return to the district, and in the most respectful terms express

to him the obligations which the convention and their constituents were under to him, for his faithful attention to their interests.

In this year, both the northern and southern frontiers of Kentucky were infested by the Indians; and whilst its inoffensive citizens were bleeding under the tomahawk and scalping knife, murdered on the road to the interior counties, and butchered on their farms and in their houses, and could obtain no protection from their government: Congress, on the first day of September *resolved to give protection to the Cherokee Indians*, the notorious robbers and murderers of the people of Kentucky. (*Vide Appendix No. 16.*) [*Page 95.*] The sensibility which this measure excited, may be conceived—it cannot be expressed. But it afforded an additional inducement to the citizens of the district to persevere in obtaining a separation, and thereby procuring the privilege of protecting themselves.

Elections were held agreeable to the recommendation before mentioned, and on the first Monday in November a convention invested with extensive powers above stated, convened at Danville. This was an important crisis in the affairs of Kentucky. On the third day it was resolved once more to address the Legislature of Virginia to pass another act, respecting the independence of Kentucky, agreeable to the recommendation of Congress. A committee was accordingly appointed to draught and report an address, which they did. On the address being reported, an amendment was proposed, and both that and the address were ordered to lie on the table. The reason of this was, that some objections had been made to the substance of the address, and several members disapproved of the proceedings *in toto*. The people of Kentucky, in full convention, had four several times solemnly declared their wish to separate from Virginia. Virginia had twice announced her assent, and Congress had once expressed their approbation of the measure; and that this assent of congress proved abortive, was well known to have been owing to the malign influence of an Eastern politician, whose talents for intrigue have become famous throughout the civilized world. To repeat the process of again applying to Virginia for her assent; again referring it to the people, and then to congress, would be a tedious parade of mere formality, and tend only to encrease the difficulties under which the district then laboured. A considerable time must elapse, before the new federal government could come into operation, and experience had furnished them with no cause to believe that the

protection of Kentucky would engross its earliest care. On the other hand, there was much reason to fear that bartering away the navigation of the Mississippi would be one of its first acts. But whatever the disposition of the new government might be, delay must be inevitable. From these considerations, some were of opinion that it was the duty of the convention under the powers delegated to them, to proceed to form a constitution; that measures should be taken to organize the district under it, and as soon as the affairs of the general government would permit, Kentucky should present herself in that organized form for admission into the union, on the conditions contained in the compact with Virginia. Under these impressions, the following resolution was submitted to the consideration of the convention:—"*Resolved*, That it is the wish and interest of the good people of this district, to be separated from Virginia, and that the same be erected into an independent member of the federal union." This resolution, resulting from necessity, contemplated no violent measures; nor did it exceed the powers delegated, but was expressly authorized by the people, under the recommendation of the convention of July, in the following words: "And also to form a constitution of government for the district, and organize the same when they shall judge it necessary."

The propriety and necessity of adopting this resolution, was advocated on the following principles: By acceding to the compact stipulated by Virginia, the contract, as far as related to the state and district, would be closed. The rights of individuals and of the district would be so far ratified, as would preclude Virginia from hereafter imposing new conditions, or varying the terms offered and acceded to. The strength of the district might under this organized form, be called into action, the attacks of the Indians repelled, and they reduced to the necessity of suing for peace. Migrations would encrease, and the country be thereby enriched and strengthened. The inconveniencies resulting from locality would terminate. These considerations were enforced by the reflection that Virginia, viewing Kentucky as on the eve of separation, would pay little or no attention to her interests in any laws which she might thereafter pass. (*Vide Appendix No. 17.*) [*Page 96.*]

As a further inducement to adopt this resolution, it was stated that there was a prospect of obtaining from Spain permission to export the produce of the country by the way of the Mississippi; and in

consequence of information which Gen. Wilkinson had given to some friends on that subject, the general was requested from the chair to state to the convention his opinion on this matter. He informed them that he had descended the Mississippi in the summer of 1787, with a view of obtaining commercial advantages for himself, and with a prospect of opening a communication for commercial purposes between New-Orleans and the country bordering on the Ohio. On his arrival at New-Orleans, he informed the governor of the object which he had in view; represented the rapid increase of population in the western parts of the United States, the fertility of the soil, the extensive navigable rivers by which the country was watered, the abundance of produce already raised for exportation, which would increase with the increasing population of the country; the great advantages which the Spanish government might derive from cultivating an amicable intercourse; the exclusive monopoly of the trade, the certainty of obtaining supplies of flour and pork for the inhabitants of their islands and the countries bordering on the Gulph of Mexico, &c.—That he had addressed the fears as well as the hopes of the Spanish nation—that he had inferred from the rapidly increasing population of the western country, from the sentiments universally entertained by the inhabitants, that they had a right by the law of God and nature to the use of that river, that the time might not be remote, when they would claim as a right what they would now accept as a privilege. General Wilkinson mentioned further, that Governor Mero requested him to commit to writing his sentiments on this interesting subject, with which he had complied by way of memorial. A copy of this he produced and read in convention, and concluded by observing, that the memorial had been received by the governor with expressions of approbation, and a promise to transmit it to his Catholic Majesty.

This memorial was much admired by the literary gentlemen present in convention, for its manly and dignified style, the copious and comprehensive view which was taken of the subject, the elegance of the composition, and its peculiar adaption to operate on the fears and avarice of the Spaniards.

The convention, in order to manifest their gratitude to Gen. Wilkinson for the exertions he had made towards obtaining permission for the western country to export their produce to New-Orleans—Resolved [unanimously] That the convention highly approve the

address presented by Gen. James Wilkinson to the Governor Intendant of Louisiana; and that the President be requested to present him the thanks of the Convention for the regard which he therein manifested for the interests of the western country.

This communication brought to recollection information received by the president of the convention on the same subject in a letter written by John Brown, while in congress, after the application of Kentucky to that body had been defeated, as herein before mentioned. A motion was then made that the president request Mr. Brown (who was then a member of the convention) to make such communication on the subject, as he should think proper.—Mr. Brown then stated in a concise manner the substance of what he had written to Col. M'Dowell. But in doing this he merely made a naked statement of the conversation, without recommending the adoption of any measures in consequence of it, or suggesting a single sentiment of approbation. (*Vide Appendix No. 18.*) [*Page 97.*]

CHAPTER VII.

Farther Proceedings of the Convention, &c.

The introduction of the proposition mentioned in the last chapter, produced considerable perplexity and embarrassment in the convention, and one while it was intended to lay the case before the people and receive from them more explicit directions.

For this purpose a committee was appointed to draught an address to the people, stating their true situation, and solemnly calling on them to furnish the convention at their next session with special instructions. This address was drawn and reported, but from subsequent proceedings its circulation was rendered unnecessary.

Among other things the navigation of the Mississippi was taken into consideration, and a memorial to congress manly and spirited, but decent and respectful, was agreed to and forwarded to that honorable body.

On the seventh and last day of the session the address to the assembly of Virginia was resumed in committee of the whole, was amended, reported to the house again, amended in the house, agreed to (*nemine contradicente*) signed, attested, and forwarded to the assembly. (*Vide appendix No. 19.*) [*Page 99.*]

The calamities anticipated from procrastinating the separation were soon realized by melancholy experience. Virginia had hitherto manifested a disposition to separate from the district on terms honorable and generous; but her temper was now changed. A third act respecting the separation was passed on the 29th day of December 1788, in consequence of the address of the convention, in which the second and eighth articles of the compact were materially altered to the prejudice of Kentucky: First, by fixing on the proposed state a part of the *domestic* debt; and secondly, by reserving a right to unappropriated lands after the district should be erected into an independent state.

This law authorised elections to be held in the several counties for members of a convention to decide *again* on the expediency of a separation, and directed that the convention should convene at Danville on the 20th day of July 1789. Elections were held accordingly, and a number of representatives sufficient to proceed to business convened at the place appointed, and on the third day adopted a resolution to the following effect.

That it was the opinion of the convention that the terms now proposed by Virginia, on which the separation of the district should be effected, were materially different from those agreed on in 1785, *and were inadmissible.* That therefore a memorial ought to be presented to the general assembly, requiring the necessary amendments to the act.

But another consequence of the delay more immediately alarming, was now experienced. The executive of Virginia had heretofore authorized the lieutenants of the several counties to call into service scouts and rangers for the purpose of giving to the inhabitants the earliest intelligence of an invasion. This measure promised to produce the most salutary effects. But the governor now [*June 1st* 1789] wrote to the county lieutenants immediately to discharge all the scouts and rangers, and in future in case of depredations to make communication to the continental officer on the Ohio, stationed nearest to the place of attack, the defence of the country being in the hands of the general government.

This was no trivial cause of alarm. The district presented a frontier of more than six hundred miles, and the regular troops, from the smallness of their number, and the manner in which they were stationed could afford no efficient protection. The troops were all

stationed beyond the extreme northern limit of the district; whereas the southern Indians were equally hostile as the northern. Not only this, but there were in all, but about six companies, and even part of them artillery; the remaining part were infantry, and on that account wholly incompetent to any effectual pursuit of the Indians, or even a safe retreat from them; as they generally made their escape on the horses which they had stolen from the inhabitants. But if these circumstances would not have rendered their aid inefficient, their distance from the settlements would; two thirds of the troops were stationed at Fort Washington, opposite the mouth of Licking: this was then more than sixty miles from the nearest settled part of Kentucky. Discharging the scouts and rangers deprived the people of the means of obtaining previous intelligence of danger; they must wait until the tomahawk and scalping knife were actually on their heads, *then* give information of it to the county lieutenant, and he make a formal communication to an officer sixty or perhaps an hundred and fifty miles distant, who as soon as convenient would send a party of men to their relief. The objection which Kentucky had to this mode of protection was, that long previous to the arrival of the troops, the citizens who had been attacked would all have been murdered and the enemy who had made the attack would have fled beyond the reach of pursuit. But this had been deemed by Virginia a matter worthy of no consideration. The remaining part of the regular troops were stationed on the north side of the Ohio, just above the rapids, nearly 200 miles distant from the former, so that all idea of co-operation on any emergency was excluded.

The convention thoroughly convinced that no aid could be derived from *this system of protection*, appointed a standing committee to draw up and forward a remonstrance to the executive of Virginia against discharging the scouts and rangers, and to address the president of the United States on the defenceless state of the frontier, the impracticability of the projected mode of protection, and to report their proceedings to the next convention. (*Vide appendix No. 20.*) [*Page 108.*]

The assembly of Virginia at their October session following, reconsidered the last act of separation, and on the 18th day of December passed a fourth act repealing the obnoxious clauses, and authorizing the people again to elect representatives, to meet at Danville on the 26th of July ensuing, to determine a *fifth time* on the inclination of the people to separate from Virginia, and the expediency of the

measure. If the convention should decide in the affirmative, they were authorized by this act to fix on some day posterior to the first of November 1791, on which the authority of Virginia was to cease, provided the general government should assent thereto; and to take the necessary measures for the election of a convention, to form a constitution; which convention was to meet posterior to the first day of November, and prior to the day to be fixed on for the determination of the authority of Virginia.

Elections were held in conformity to this act, and the representatives chosen met at Danville on the 26th day of July 1790, and on the 3d day decided on the expediency and propriety of a separation on the terms *now* offered by Virginia. They then prepared an address to congress informing them of the measure adopted, and convinced that the district would now be received into the union as an independent state, they proceeded to make the arrangements necessary for the election of representatives to form a constitution. Danville was fixed on as the place of meeting, the first Monday in December †1792 as the time, and the first day of June following as the period when the new state should commence her political existence. (*Vide appendix No. 21.*) [*Page 111.*]

The encrease of population, and the consequent expansion of the settlements, and the diffusion of the settlers encreased the calamities arising from Indian depredations. This had been foreseen and expressed in the November session of 1788. In these two years more persons were murdered, and more horses stolen than in any two preceding years. Yet at this time the governor of the territory north west of the Ohio, was by some means induced to complain to the executive of Virginia, that the inhabitants of Kentucky had made incursions into the territories of Indian nations who were in amity with the United States. In consequence of this, the governor of Virginia wrote to the county lieutenants to issue the most positive orders that no party ordered out to repel the attack of an enemy, should under any pretence whatever, enter into the territory either of the United States, or of any Indian tribe. The absurdity and cruelty of this mandate would need no comment even if the premises on which it was predicated had been true. But it is presumed this was not the case; there is no reason to believe that the incursions mentioned by the territorial governor, had ever been made, and much

† Should read 1791.

reason to believe that they never were. The Kentucky Gazette was published weekly during all those years, and as intelligence respecting either the invasion or pursuit of Indians was to the citizens of all the most interesting, it is believed it was never neglected. But the files of that paper have been examined, and no notice is taken of any expedition at, or any way near the times alluded to by the governor. Whether he received his information from the Indians themselves, or from white men does not appear, but however received, it is believed not to have been true. (*Vide Appendix No. 22.*) [*Page 114.*]

But happily by this time the President of the United States had discovered that it was necessary to adopt some decisive general system respecting the Indian tribes, and while these regulations were carrying into effect, he devised temporary means to give partial relief to sufferers from savage hostility. An incipient measure was to employ scouts to range in the frontier counties. This the Hon. Harry Innes, late attorney general for the district of Kentucky, but then and still judge of the Federal District Court, was authorized by the secretary at war to do, and immediately carried into execution.

Judge Innes embraced this opportunity of making an official statement to the secretary at war, by a letter dated July 7, 1790, of the depredations which had been committed by the Indians since he became acquainted with the district, which embraced a period of some months less than seven years. In this time the Indians had murdered in the district, on the wilderness road, and on the Ohio, about fifteen hundred persons, had stolen upwards of twenty thousand horses, and had destroyed or carried away other property to the value of at least fifteen thousand pounds! (*Vide Appendix No. 23.*) [*Page 114.*]

CHAPTER VIII.

Kentucky Becomes an Independent State.

Employing scouts and rangers, as mentioned in the last chapter, was calculated to produce a particular and determinate effect. It impressed on the minds of the Indians a belief that the whites were on their guard, and they might have concluded that a sufficient force was in readiness to take advantage of any discoveries which these

centinels should make. This persuasion operating on ignorance and fear, would repress or divert an intended invasion; and however limited and restricted in the right of self-defence the people were by their own government, there was still convenience in having intelligence when it was necessary to assume a defensive attitude. But beyond these incidental advantages, the establishment was of no use. The militia, to whom these scouts were to convey intelligence, were prohibited from going in quest or pursuit of an enemy; and in effect prohibited from every effort of self-defence, unless in co-operation with an army far distant from the theatre of attack, and to which the existence of an attack might be utterly unknown.

The people were not so infatuated, as to feel themselves secure under such a system of defence; and if they had been, the events which soon followed, would have undeceived them. A continuation of Indian depredations produced a meeting of the citizens in Danville on the second day of July, 1790; at which a resolution was entered into—"That it was expedient for the field-officers of the militia to assemble on the 26th instant, to consider the best mode of defence which could be pursued." (*Vide Appendix No. 24.*) [*Page 116.*]

But notwithstanding the incursions of the Indians were frequent, and often attended with fatal consequences; yet the want of legitimate power in the officers, and the apprehension of again incurring the censure of government, prevented them from doing any thing under this resolution.

The application of the last convention to congress, to permit Kentucky to become an independent state, met with approbation, and by an act bearing date February 4th, 1791, it was declared that on the 1st. day of June, 1792, the said new state, by the name & style of the State of Kentucky should be received and admitted into the union as a new and entire member of the United States of America. (*Vide Appendix No. 25.*) [*Page 116.*]

In a preceding part of this narrative it has been alledged that the embarrassment and procrastination which Kentucky met with on her first application to Congress, was the result of Eastern policy and jealousy. The presumption was then strong; but the fact was now fully verified. Vermont was brought forward with Kentucky, admitted at the same session, and *was entitled to a representation in Congress one year sooner than Kentucky was.*—(*Vide Appendix No. 26.*) [*Page 116.*]

This superior advantage acquired by the state of Vermont, was not the reward of any patience or resignation displayed by her. She had not acquired her independence by submission, petition and compact. She had not obtained the consent of the state to which she originally appertained, even once, much less four or five times. She had not procured the previous approbation of congress. Her separation was arbitrary, violent and insolent. She had seized on all the public lands in the district, and even on such as by the disposition of her parent state had become private property. But there was in the case of Vermont a practicability of immediate admission, which did not exist in the case of Kentucky. She had organized herself—Kentucky had not. Vermont could be admitted as a state *in esse*—Kentucky only as a state *in futuro*. But had Kentucky in the year 1788, organized herself under the consent of Virginia, then twice obtained, she might at this time have come forward with the same advantages which Vermont possessed, and probably have obtained the same prompt and complete admission.

On the ninth day of March, in the year 1791, the president of the United States authorized Charles Scott, *John Brown*, *Harry Innes*, Benjamin Logan and Isaac Shelby, *or a majority of them*, to call into service a corps of volunteers from the district of Kentucky, to march on an expedition against the Indians north-west of the Ohio, to be commanded by Brigadier General Charles Scott; and likewise to provide measures for the defence of the frontiers of the district. In pursuance of these powers, an expedition was undertaken in the May following, by Gen. Scott against the Wabash Indians, in which thirty-two warriors were slain, fifty-eight prisoners taken, and all their corn destroyed. They likewise invested General Scott with authority to call into service 326 privates of the militia for sixty days, and to station them in such manner as in his discretion the defence of the frontiers might require.

On the 25th day of June ensuing, the same gentlemen were commissioned by Arthur St. Clair, then commander in chief of the armies of the United States, to set on foot and carry into execution another expedition against the town of Kekiah on the Ouabashe. This was commanded by General Wilkinson, who marched in August, killed ten warriors, took thirty-five prisoners, burned two towns, and destroyed five hundred acres of corn. (*Vide Appendix No. 27.*) [*Page 117.*]

In the month of December elections were held for representatives, to meet at Danville on the first Monday in April, 1792, to form a constitution.—The persons elected met at the time and place appointed, and framed a constitution, under which the state of Kentucky commenced her operations at Lexington, on the first day of June following.

CHAPTER IX.

The Light in which the Pretended Spanish Conspiracy was Viewed by the General Government.

In the preceding chapters I have given a general narrative of the transactions relative to a separation, from the time the idea was first suggested until the new government was established and came into operation. It remains now to consider the inferences naturally resulting from these facts; to bring into view such incidents as were necessarily omitted in the body of the history, and submit the whole with a few reflections to the consideration of the impartial reader.

It must be remembered that Kentucky set an example, the first in America—perhaps in the world, of a new state being formed out of an existing one by voluntary consent.

The necessity of Kentucky's becoming one day independent, had been foreseen at an early period, and a provision for this event was grafted on the very constitution of Virginia. (*Vide Appendix No. 28.*) [*Page 119.*]

The people of Kentucky caught at this when they were rapidly sinking into irremediable ruin, and no other possible mode of escape presented itself. When destitute of all the comforts and most of the necessaries of life, surrounded by foes, deserted by friends, and neglected by all the world. When there was no eye to pity, no ear for complaint, and no sympathizing bosom which offered repose.

The population of the district was then composed of emigrants from most of the American states, and several European kingdoms, bringing with them all the prepossessions of patriotism and prejudices of ignorance. Yet during the long term of seven years, through which the district stood in the attitude of supplication for—permission to defend herself, and amidst all the taunts and scoffs of haughty, interested and jealous politicians, the systematic opposition of the Eastern states, and the tantalizing caprice of their own, this people

never projected or meditated any measures of violence, but commenced, conducted, and concluded the matter in peace. This manifests the almost super-human moderation and forbearance of the popular leaders, and the complete ascendancy which they had over the people.

It has been seen that in 1783 a proposition was made to organize the district, but this was no declaration of hostility either towards Virginia or the general government. It was the exercise of a right acquired by the repeated consent of the former, with the express approbation of the latter, positively delegated to this convention; and contemplated not a separation from the confederated states, but an unition with them.

I feel no disposition to cast the slightest censure on those who opposed and defeated that measure. Caution and timidity, were in their situation natural; they were on a ground which human footstep had never trod, and had an election—of *dangers only.* I doubt not the patriotism or purity of their motives. But it is impossible not to see that the rejection of that proposition has entailed calamities on Kentucky which she has been struggling with from her birth, under which she has often been ready to sink, and the termination of which is beyond any human calculation. Had this proposition been acceded to, the immense sums of money which were paid into the treasury of Virginia in completing titles to the Kentucky lands would have been paid to the new state. Above fifteen hundred thousand acres of the best land in the district, which in the four following years were swept away by Virginia military claims would then have been the patrimony of Kentucky.* The money and property, at the lowest valuation, which was lost by the rejection of this measure would even at an interest of *one per cent* have produced an income of twenty thousand dollars per annum. With such a revenue the new state might have commenced her political career with the animating vigor of effective independence. Whereas by the year 1792 almost all her money had been drawn into the treasury of Virginia, much of the personal property of her citizens plundered by the Indians, or had perished in the hands of the owners for want of some avenue to commerce, and her real property swallowed up almost *en masse* by military claims.

* The acts of separation contained a provision to the following effect, viz: That after the first day of September 1788, the residue of all lands then remaining unlocated in the district, should be the property of the proposed state, and subject to her disposition, notwithstanding Virginia had appropriated them to descriptions of individuals for military or other services. (*Vide Appendix p.* 16.) [No. 6, page 74.]

Thus destitute of money, bereft of patrimony personal and real, she acquired an independence beggarly and barren, a government of her own without means to support it, and the care of a people long devoted to destruction, "meted out and trodden down," plundered by foes, and despoiled by friends.

It has been often asked, why are our finances in a state of perpetual exhaustion? I answer, it is because our government commenced in *poverty*, progressed in *indigence*, and grew to maturity in *beggary*.

The far famed memorial of General Wilkinson to the governor of Louisiana, to which the charge of treason has been attached by the editors of the Western World, was read in full convention of thirty five members, convened from every part of the district, deliberating and debating openly in the hearing of all whom curiosity or even malice could attract to the place—at the metropolis of the district, during the session of the Supreme Court, when and where there was every attraction to draw together a large concourse of people of every cast of character. Can the reader believe that a treasonable conspiracy would have been promulgated at such a time, at such a place, in such a manner? Col. Marshall is with this junto, the touchstone of American patriotism. Be it so. But this same Col. Marshall was a member of that convention, and voted with them the thanks of himself and his constituents to General Wilkinson for writing this same *treasonable* memorial. Col. Muter was likewise a member of the same convention, and concurred in this vote of thanks;—and to this gentleman, the editors of the Western World allow the merit of surly and inactive patriotism at least. But Col. Muter does not say it was a memorial of a treasonable nature, he says it was of a commercial nature.

"I was in the convention in November 1788, though not in July 1788. I recollect that General Wilkinson read in the convention a memorial of a commercial nature, which he said he had presented to the governor of New Orleans." [*Vide Colonel Muter's letter, Kent. Gaz. Sep. 13, 1790.*]

And notwithstanding Col. Marshall's encreasing dislike to the *memorialist* might afterwards induce him to take a *legal* view of the *memorial* different from what he had at first, and different from what Col. Muter still retains; yet as far as matter of *fact* is concerned, as far as the *contents* of the memorial have been brought into view, there is no apparent difference. Col. Marshall in the February following

transmitted to General Washington an account of the contents; and without imputing to him an *iota* of prejudice, more than what as *man* he must necessarily possess, or any disposition to uncandid representation; we may conclude that his account of the matter was as unfavorable to Wilkinson as the truth of the case would admit. But General Washington found in it nothing which he considered as treason. And it is presumed the reader of this narrative will concur with him in opinion. He is here presented with Col. Marshall's account, from which he may draw his own conclusion.

"He urges our natural right of following the current of rivers, flowing through our country into the sea. He states the extent of our country—the richness of our soil, abounding in choice productions, proper for foreign markets, to which we have no means of conveying them, should the Mississippi be shut against us. He states the advantages Spain might derive from allowing us the free use of that river. He goes on to show the rapid population of this country, and the eagerness with which every individual looks forward to that navigation. He states the general abhorrence with which the people of the western waters received the intelligence that congress was about to sacrifice their dearest interest by ceding to Spain, the navigation of the Mississippi for 25 or 30 years, and represents it as a fact, that they were on the point of separating themselves totally from the union on that account. He addresses himself to their fears by a pompous display of our force, and urges that should Spain be so blind to her true interest, as to refuse us an amicable participation in the navigation of that river, and thereby force us into violent measures Great Britain stands with her arms expanded ready to receive us, and assist our efforts for the accomplishment of that object; and quotes a conversation he had a few years ago with a member of the British House of Commons to that effect. He states the facility with which their province of Louisiana may be invaded by the united forces of the British and Americans, by means of the river Illinois, and the practicability of proceeding from thence to their province of New-Mexico. Britain he says will probably aim at the possession of Louisiana and New-Orleans for herself, and leave the freedom of navigation to America: and urges pretty forcibly, the great danger the Spanish interest in North America would be in from the British power, should Britain possess herself of the mouth of the Mississippi and thereby hold the two grand portals of North America, that river

and the St. Lawrence; and concludes with an apology for the freedom with which he has treated the subject; and adds, that it has (at their own particular request) been drawn from a man whose head may err, but whose heart cannot deceive."

But Col. Marshall himself in a short time after, appears to have entirely changed his opinion on this subject, and to have communicated this change to General Washington. He wrote a letter to Washington on the 11th day of September, 1790, in which he stated the sentiments he *then* entertained of the matter. This letter has been kept out of view, and will probably never appear. But what the contents of it were, may be learned from Washington's answer, which was published in the Western World of November 9, 1806. In this the writer says—"In acknowledging the receipt of your letter of the 11th of September, I must beg you to accept my thanks for the pleasing communication which it contains of the good disposition of the people of Kentucky towards the government of the United States. I never doubted but that the operations of this government, if not perverted by prejudice or evil designs, would inspire the citizens of America with such confidence in it, as effectually to do away those apprehensions which, under the former confederation our best men entertained of divisions among ourselves, or allurements from other nations. I am therefore happy to find that such a disposition prevails in your part of the country, as to remove any idea of that evil, which a few years ago you so much dreaded."

The evil which Col. Marshall a few years ago had so much dreaded, appears from his letter of 1789, to have been that Wilkinson and Brown were devising ways and means to separate Kentucky from the union.* General Washington now infers from Colonel Marshall's own statement, that such a disposition prevailed in Kentucky, as to remove any idea of this evil. Thus the last sentiments of Col. Mar-

* "This *essay* has (I am told) been laid before the court of Madrid, and as a violent separation from the United States, seems to be laid down as the ground work upon which every other consequence depends, I think it probably has produced instructions from that court to the Spanish resident at Congress, that if the western country should declare itself separate from the union, to avail himself of that event. I found this conjecture upon Mr. Brown's confidential letters from congress to his friends in this district. Some of those letters I have seen—he mentions that in a private conversation, which he had with Don Gardoque, he was informed that so long as this country remained a part of the union, we had nothing to expect from Spain—but were we to declare ourselves separate from, and independent of the United States, he is authorized by the king of Spain, to treat with us respecting commerce and the navigation of the Mississippi."—(*Col. Marshall's first letter.*)

shall on the subject, appear to have corresponded with his first. He saw nothing dangerous in the politics of Wilkinson and Brown in 1788, and he saw them in the same point of view in the year 1790. The true state of these transactions appears to have been as follows. Colonel Marshall considered Gen. Wilkinson and Mr. Brown as the popular rivals and personal enemies of his family. With these impressions he was predisposed to view all their actions in an unfavourable light. He became suspicious, and communicated his suspicions to the executive of the United States.*—Upon better consideration and strict observation on the conduct of these gentlemen, he became convinced that his suspicions were not well founded, & that whatever ill will they might have against him and his connections, they had none against the United States; and with a magnanimity which all parties must approbate, informed the executive that the suspicions he once had against them, no longer existed. General Washington's last letter appears to have been a direct answer to this communication.

That this was the real state of the case, may be inferred from the following consideration:—Gen. Washington's temper is well known to have been cautious and circumspect in an high degree; and it appears from this correspondence, that he reposed full confidence in the *integrity* and *patriotism*, and no small share of trust in the *discretion* of Col. Marshall.† It is therefore by no means probable that he would, (as he shortly afterwards did,) appoint to offices of immense responsibility, men, of whose treachery Col. Marshall's sus-

* Colonel Marshall did not impute any criminality to Mr. Brown's conference with Gardoque; he only mentioned it as a matter which had excited his suspicions. Indeed his own conduct shews that he could not have considered it as criminal; for he himself had just held a conference with Conelly, not merely respecting a commercial treaty, but respecting an absolute separation of Kentucky from United America. This he communicated to General Washington. Mr. Brown had communicated his conference to the judges of the supreme court of his country. Col. Marshall did not approve of Connelly's proposition; neither did Mr. Brown approve of Gardoque's—and Col. Marshall does not charge him with approving it; he merely suggests his suspicions that he did.

† "In the meantime, as I know you are sincerely devoted to the interest of your country, and warmly attached to the union at large, I shall hope you will persist in taking the most *discreet and effectual measures* for obtaining as accurate a knowledge as possible of the transactions in your quarters, a *report* of which I shall earnestly request to be favoured with, whenever you shall have the power of transmitting it through a confidential channel; or, if it shall have been found necessary, whenever a cypher shall be established between us: for without some such precaution, a miscarriage of letters on such delicate subjects, might be attended with very disadvantageous consequences." *Gen. Washington's letter of March 27th, 1789.*

picions has so much alarmed him, unless Col. Marshall had himself informed him that he had found those suspicions groundless.

But whatever the ultimate conclusions of Colonel Marshall might have been on the subject, we have the strongest possible evidence that those of General Washington were favourable to the accused; and that if Col. Marshall did not himself retract his own insinuations, they were vastly overbalanced by opposing testimony. The first communication made by Colonel Marshall on the subject, was received by General Washington in March, 1789, and the last, as it seems, on the 11th of September, 1790. The editors of the Western World tell us, that in this conference Colonel Marshall gave information of the existence of the Conspiracy, the strength of the party, and the names of the partizans. (*Vide Appendix No. 29.*) [*Page 119.*]

Among these they have mentioned James Wilkinson and John Brown, as the principals, and Harry Innes as an accessary at least. Yet, in the same year, (1789) this General Washington selected the same Harry Innes as District Judge of the court of the U. States for the district of Kentucky; an office which, from possessing all the jurisdiction which an original and appellate court has in other parts of the union, is invested with immense powers and trust, and subject to an unparalleled degree of responsibility. This choice met with the approbation of the senate in the September of the same year.

In the April ensuing the same man was invested by the president of the United States (the same General Washington) with a military trust, co-extensive with the district; and in the July following received the thanks of the president for the prompt manner in which he had executed it. (*Vide Appendix No. 30.*) [*Page 119.*]

In the March following, he was, by the same president, together with John Brown, (a principal conspirator) Charles Scott, Benjamin Logan and Isaac Shelby, invested with a superintending military authority to enlist men, commission officers, and carry on war at home and abroad.

The inference resulting from this conduct in the president of the United States, is strong and irresistible. Three of these commissioners were authorized to act; Brown and Innes were two, and they could always overrule the third, let him be who he would. This appointment was long after Col. Marshall's correspondence with Gen. Washington, in which the editors of the Western World say that he named the partizans, and consequently named Innes, if he was one; the

reader has seen that he did name John Brown, & stated his conference with Gardoque in a manner as unfavourable as possible. Yet Gen. Washington invested these men with authority which they might have readily converted into an absolute power; and in the beginning of the following year appointed that arch conspirator James Wilkinson (the representations of Col. Marshall notwithstanding,) second in command in the armies of United America. I will venture to affirm that no man who has ever heard of Washington's character, will for a single moment believe that he would have made one of these appointments, if there remained on his mind a single trace of the suspicion which Col. Marshall had excited.

Let it not be said that the scarcity of legal and military talents compelled the president of the U. States to fill the judicial and military departments with traitors and conspirators. There were many gentlemen of the bar in Virginia and several in the District of Kentucky, whose talents were well known to be adequate to all the duties of the office of district judge, and to some of them it would have been highly acceptable. As to the military appointments, it is obvious that some which related to this department, required but moderate military talents, such as that of the commissioners for the two expeditions and defence of the frontiers in 1791. Sound judgement pure patriotism, and inflexible integrity were the principal *desiderata* in these, and accordingly we find the president appointing Mr. Brown, who it is believed never held any militia office before or since, and who notwithstanding Col. Marshall's representations, had enough of Gen. Washington's confidence, to be the real author of the whole scheme. He it was, who projected and recommended it to the president, and through his persuasions and assurances of success, was Washington prevailed on to adopt it. Mr. Brown, in conjunction with General Knox, concerted measures for carrying it into execution; was, as we have seen, appointed a commissioner, and in order to set an example of patriotism to his countrymen, went as a volunteer in one of the expeditions. He afterwards received the personal thanks of the president for the faithful execution of his trust. These facts are known to Gen. Knox, who was then Secretary at War.

As Candidates for the office to which Gen. Wilkinson was appointed, there were then living in various parts of the United States, a number of general officers who had been the companions of the president during the revolutionary war; men of whose patriotism and

military prowess no doubt had ever been suggested, and many of them much experienced in that mode of warfare which the nature of the conflict rendered it necessary to pursue.

With an undoubted right of election, and this wide field for the exercise of it, the "sage and circumspect Washington, after pondering much, consulting much, resolving slowly and resolving surely," made choice of the man I have mentioned, and by so doing, declared in language which can never be mistaken or forgotten, his sentiments respecting the pretended Spanish Conspiracy.

CHAPTER X.

The Uniform Sentiments of the Kentucky People Respecting the Pretended Spanish Conspiracy.

From the preceding chapters the reader has learned in what estimation this calumny was held by the government of the United States, at and after its propagation. I shall commence this with shewing the sentiments then and since entertained of it by the American people. And here it is requested of the reader to be particularly attentive to dates.

Mr. Brown's communication to Col. M'Dowell was received in July 1788, but *prior* to the meeting of the convention which sat in that month. That convention passed an unanimous vote of thanks to Mr. Brown for his faithful attention to the interest of the district. This vote of thanks was predicated on the information which this convention derived from the communication made to Col. M'Dowell, and Mr. Brown on his return in September, was therewith presented by that gentleman. Mr. Brown was then elected a member of the convention which sat in the November following—by the citizens of Mercer county, the county where Col. M'Dowell the great depository of all this communication then resided. The patriotism of this gentleman, and the purity of his mind has been always admitted by all parties in politics. Let the reader then consider whether, with evidence of Mr. Brown's treasonable designs full in his view, he would have remained silent while a vote of thanks for his patriotism passed an assembly of which he was the president? Would he have become himself the organ to communicate these thanks to a traitor? Would

he have remained silent and suffered the citizens of his own county to have elected this traitor to an office of all others the most favourable to the execution of his treasonable designs?

I am aware that the minions of Wood & Co. have attempted to undermine the credibility of this patriarchal judge, by insinuating that his great age has rendered him forgetful. That his memory is remarkably retentive, and even minute, is universally acknowledged by his numerous and respectable associates. But it must be remembered that Col. M'Dowell was then eighteen years younger than he is now, and it is not pretended that *even now* he cannot remember any ordinary transaction for the space of two months. It has never been insinuated that he is so forgetful that he would in September thank for his patriotism the man, who in the preceding July he had convicted of treason.

But in the Convention of November, 1788, Mr. Brown made a *public* communication of his conferences with Gardoque, in the presence of honest simplicity, wary jealousy, and suspicious duplicity —in the hearing of confidential friends and insinuating hypocrites, of open rivals and secret enemies. Yet in this communication, the one party found no cause to distrust his integrity, and the other no foundation on which an accusation could be erected. This was manifested in the most decisive manner, by his being elected a member of congress from the district in the February following, not only by a majority of the inhabitants, but unanimously and unopposed.

But previous to the next congressional election a number of emigrants had settled in Kentucky; these were of course strangers to Mr. Brown.—This afforded a hope—a little hope that something might be done to his prejudice. Accordingly, James M. Marshall was brought forward as a candidate. An accusation against Mr. Brown, of defection from the American cause, was *fabricated*.—The *end* was to defeat his election; and those who had this in view, took full liberty of conscience as to the means of effecting it. Among other *means* of the same *moral* complexion, a copy of his letter to Col. Muter was obtained, in the manner stated by that gentleman in the Kentucky Gazette of the 4th of September last,* and published in

* "As a letter from Mr. Brown had been read in the convention (though as I was not a member, I did not know certainly, whether the whole or a part only had been read, or whether it had, as is customary, lain on the table for the inspection and consideration of the members) I conceived it to be no breach of confidence to shew his letter to me, to colonel Marshall; or to speak of it, when

that paper.—All this was done while Mr. Brown was absent from the district; but so stable and unwavering was the confidence which his countrymen reposed in him, that with all this exertion, Marshall obtained only seven hundred votes, whereas Mr. Brown had more than seven thousand!

The first legislature of Kentucky, at their first session in June, 1792, unanimously elected Mr. Brown to the senate of the United States, and in the year 1793, he was again unanimously elected for six years, *Humphrey Marshall being then a member of the Legislature!* and in 1798, re-elected for six years more.

Thus did this man, in the very theatre, where his every crime is alledged to have been either committed or promulgated, in opposition to all the jealousies of real patriotism, the calumnies of pretended patriots, the machinations of rivals, and the slanders of enemies retain the unwavering, entire and undivided confidence of all his former acquaintance, and conciliate that of strangers as soon as his public character became known. That he did this, without the

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it became the subject of conversation, even, if the principle mentioned above, had been entirely out of the question.

"Soon after Mr. James Marshall's arrival in the district, he told me he had been informed I had received a letter from Mr. Brown containing matters of public concern, mentioned part of the contents, and expressed a wish to see it. I did shew it to him, because I thought it better that he should form his opinion of its contents from what he read himself, than that he should judge of them from what was repeated to him from memory, where possibly there might be some mistake that would mislead him.

"After this, when I supposed the business of a total separation to be quite at an end, I never showed the letter to any person whatever; and I even avoided as much as possible, making it the subject of conversation.

"When I was in Mercer in July last, I was told by two gentlemen, at different times, that Mr. Marshall, when questioned by Mr. James Brown, with respect to his having spoken to the injury of his brother's character, had said that he had partly formed his opinion of his brother's conduct from what was contained in the letter above alluded to. I made no answer to the information I received; but I felt some uneasiness at finding a subject again brought forward, which I hoped and expected was entirely done with. I had not, however, before I received the information abovementioned, ever heard that Mr. Marshall had reflected on Mr. Brown's conduct, from the time he became a candidate.

"A few days before I set off for Fayette August court, Mr. Marshall came to my house, and requested that I would furnish him with Mr. Brown's letter to me, or that I would carry it to Lexington. I told him I would carry it with me, and accordingly did so.

"When I got to Lexington, I found it to be the common talk of the town, that a duel was to be fought, between Mr. Marshall and Mr. Brown. On Wednesday forenoon Mr. Marshall applied to me for the letter: I refused to give it to him, but told him I would attend at any time and place and produce it, if necessary; he answered that, that probably would not do, because when he wanted to make use of the letter, there might be neither time nor opportunity to send for me; I

least aid from any of the talents of a demagogue, must be obvious to all who have the slightest acquaintance with him. No man possesses less flexibility of manners or less facility of assuming a character different from that which nature and habit has imposed on him.

The reader has seen how the people of Kentucky disposed of the great conspirator, John Brown, and may probably wish to know what they did with his coadjutors, Innes, Sebastian, Wallace, and Nicholas. As soon as the new government came into operation, Innes was appointed *Chief Justice of Kentucky*, an office which he declined accepting; Wallace and Sebastian were appointed judges of that court, from whose decisions no appeal or writ of error lies; and Nicholas was appointed to the only office which he would accept, that of attorney-general for the state of Kentucky. These men were nominated by Isaac Shelby, a man who the reader will see was a member of every convention, was in conclave with some or all of these men in special committees. He must have possessed sufficient intelligence and information to discover their merit or demerit, and he is not insinuated to have ever been partial to the Spanish Conspiracy. Several of

told him then that I would give him an extract from the letter, which I should accompany with my reasons for giving the extract, and for ever showing the letter at all.

"I was anxious to prevent a duel from taking place; and particularly so, to do every thing in my power for that purpose, without publicly appearing in the business; and from circumstances, I was lead to believe that, an accommodation might probably take place, and that the production of the letter, or an extract from it, might lead to it. I therefore, furnished Mr. Marshall with an extract from the letter, accompanied with a statement of my reasons for doing so, and restricted him to show it to Mr. Brown only, or to one or two gentlemen more, with his approbation. I left town on Thursday.

"On the Friday evening following, Mr. Marshall came to my house, and requested that, I would consent to the publication of the extract in his possession. I told him I was averse to doing so, because I did not wish to injure Mr. Brown, nor even to appear in the business at all. He urged that he had been accused of telling a falsity, and that he had no other way, as matters stood, of vindicating his character from a charge so injurious to it. I told him then, that I would give him an answer in the morning. In the morning I told him, I wished and hoped that, the business could be done without the publication he requested, and that I was willing to come forward when properly called upon, and disclose every thing in my power: but on his urging that, as the matter was now become public, nothing but the publication could vindicate his character, with respect to his having told a falsehood concerning the letter, I consented that, *in case of absolute necessity*, he might publish the piece I had furnished him with, in which the extract was contained; but that he must publish the whole if he published at all.

"'Tis impossible for me to give the whole of the conversations that passed between Mr. Marshall and me, on this occasion, but I think that, I have given the substance of them; and I am clear that, when I finally gave my consent, I have given the very words I made use of. Whether Mr. Marshall might always, fully understand me, in our different conversations, I cannot pretend to say: but I always endeavored to express myself, as clearly as possible."

these nominations, it is believed, were approved of by the senate unanimously, and to none was there more than one dissenting voice.

I must now ask permission to request the special attention of the reader to the †seventeenth number in the following appendix. That contains a complete journal of the November convention of 1788. It will be remembered that the editors of the Western World have assumed the proceedings of this convention as the substance of their accusation. Here it was that General Wilkinson read his *treasonable* memorial—here it was that Mr. Brown reported his *treasonable* conference—and here it was, (as they say in their first number,) that Gen. Wilkinson made a *treasonable* motion, that they should proceed to form a separate constitution, independent of the approbation of Virginia. The reader will see from the journal, that Wilkinson made no such motion, and that the motion which he did make, so far from tending to so rapid a progress, was of a retrograde tendency. Its object was not to proceed to do any thing, except to impart to the people at large the information which had been received by that body, and to await their future instructions.

They say further, that this motion was seconded by Judge Wallace, now of the Court of Appeals. It is presumed that the falsehood of this assertion is sufficiently proved by shewing that the motion was never made. But it could be proved by a thousand witnesses that Judge Wallace never seconded any motion whatever, which was made in that convention, for this plain reason, HE NEVER WAS A MEMBER OF IT. And as if these men were not satisfied with being contradicted by all kinds of testimony, oral and written, living and dead, they have themselves, in their 12th number, proved by Dr. Brooke, one of *their own witnesses*, that Judge Wallace had no seat in that convention. They say further, that this motion was warmly supported by all those members who were then supposed to be engaged in the negociation with Gardoque. I shall leave the reader to determine whether a motion which never was made, could be warmly supported; and to settle in his own mind what measure of confidence is due to men convicted of three palpable falsehoods in a single sentence.

In their ninth number they say, "That our readers may be better enabled to judge of the situation of Kentucky in 1788, and of the wishes of her thinking and patriotic citizens, we present them with

†Should read nineteenth.

the address of the convention, held at Danville the 10th of November, 1788, to congress, as likewise the address to the General Assembly; which addresses it is to be recollected, were opposed by all the members of the Spanish Conspiracy." Here they publish the two addresses, which the reader will find in the seventeenth number of the appendix. And such, say they, "were the energetic addresses which displeased Wilkinson and his associates. The Spanish conspirators wished for an immediate declaration of independence and *alliance with Spain*." By turning to the journals (page 44 of the appendix,) the reader will see that the *energetic* address to Congress was prepared by a committee of seven, four of whom, viz. INNES, BROWN, SEBASTIAN and WILKINSON, have been constantly held up as the great ringleaders of this conspiracy; that it was reported to the convention by WILKINSON, and agreed to without a single amendment or one dissenting voice; and it is a fact well remembered by several of the members of that convention, and even manifested by the stile of the address, that it was actually drawn up by that arch conspirator James Wilkinson. So much for the opposition of the Spanish Conspirators to this address.

The *energetic* address to the assembly of Virginia, was prepared by a committee of six members, among whom was the same WILKINSON and JOHN JOUET, another conspirator; and after some amendments, was agreed to unanimously by the whole convention. Thus we see these Spanish conspirators heartily concurring with the "wishes of the patriotic and thinking citizens;" and actually taking the lead in these *energetic* addresses, which were considered by all parties as the most efficient means of obtaining the object of those wishes. And John Brown, as the reader will see in the same journal, instead of advocating a separation of Kentucky from the United States, brought forward a resolution, expressing his own wish and that of his constituents and countrymen, that it should become a "*member of the federal union.*"—This is the sum total of the evidence furnished by the proceedings of that Convention, of the existence of a Spanish Conspiracy, and of the guilt of the conspirators.

It must be peculiarly mortifying to the advocates of this prostituted print, that they could not fix a single charge on Mr. Brown which has not been refuted by conclusive evidence. They commenced their first number by asserting that he had made communications to Col. M'Dowell respecting prospects of personal aggrandize-

ment from the Court of Spain, in consideration of his aiding a project for subjecting Kentucky to the Spanish government, & that he had made similar communications to Governor Greenup. Both these gentlemen came forward in print and peremptorily declared these statements to be false; and their character for undeviating veracity, is nearly as well established as that of Wood & Co. is for the uniform reverse. Another charge was, that of being present, aiding and abetting, in forcibly imposing on the chief justice of Kentucky, the office of chairman to a treasonable committee, held at Lexington on the 28th day of March, 1794. This accusation is brought forward in the thirteenth number of their paper. But Mr. Brown was at that time a member of the Senate of the U. States, was then in his place more than six hundred miles distant from the said committee, and unfortunately for the interests of calumny and falsehood, that body keeps a journal which shews the presence and absence of its members, and this journal proves that Mr. Brown was present in that house every day for months preceding and following the day when this transaction is stated to have taken place, and even on that very day, as will appear by the following extract from the journal:

"Friday, March 28, 1794.

"Those who voted in the affirmative are, Mr. Bradford, Mr. Bradley, Mr. BROWN," &c.—[*Vide journals of the Senate for* 1794, *p.* 96.]

So much for these specific charges. But the last one is ushered in with the following *general* accusation: "BROWN, Wallace, and Sebastian, were about the same period, (viz. 1794) incessantly convening meetings from different parts of the state under the plausible pretence of petitioning congress for the redress of some grievance of other; but in reality, to procure an opportunity of pouring forth their vindictive spleen against the executive government."—Now it is a notorious fact that Mr. Brown "about this period" was absent from Kentucky for the space of three years, lacking a few days, and even once (to use an expression of their own) set his foot on Kentucky ground during all that time. For the truth of this assertion, I appeal to all the intelligent men then in the state.—But when he was here, did he ever head popular assemblies of self-created politicians, and "harangue the people?" No man who values his reputation, will say he did, all Mr. Brown's acquaintance knew that he never possessed talents or taste for such an occupation.

It is to be remembered that all this evidence of Mr. Brown's innocence stands unimpeached by any countervailing proof. For they have produced no testimony. But, alarmed at the facility with which their direct statements were disproved, they made one general accusation against Mr. Brown of defection to the American cause, & predilection in favour of Spain, before, at or after the time when Kentucky became an independent commonwealth, manifested where and how, the Lord knows. A charge of this sort seemed to bid defiance to any negative evidence.

But early in the year 1788, while the application of Kentucky was depending before congress, Mr. Brown anticipating the occasion which the district would shortly have of forming a constitution, and impressed with the necessity of a new government being organized on correct principles, requested from one of the first statesmen in America, if not in the world, his opinion on the subject of a constitution for the new state. This statesman was James Madison, Jr. And in answer to this request Mr. Madison, in a letter dated the 27th of May, 1788, wrote as follows: "The request made on the subject of a constitution for the new state, needed no apology. Nothing would give me more pleasure than to throw in my ideas towards so important a work, were it within the compass of practicability. But under present circumstances I can promise nothing of that sort. I did not receive your letter till yesterday. Had I received it ten days sooner I would at least have attempted some outlines. I shall have an opportunity in Richmond of conversing with the members from Kentucky, and if the subject shall be introduced, shall be very ready to suggest hints that may occur."

After this application to congress had been defeated in the manner before stated, Mr. Brown then on his return to Kentucky, wrote to Mr. Madison from Pittsburgh again requesting his aid in planning a constitution for Kentucky, and desiring him to assume as the basis of his observations, a form of a constitution draughted by Mr. Jefferson for the state of Virginia, which may be found in Jefferson's notes, making such alterations as he should think proper. In answer to this letter Mr. Madison wrote from New York, where congress were then in session, Octo. 12, 1788, as follows: "I find by the act of your late convention, that another is to take place in November, with power to prepare a form of government for Kentucky In consequence of this information, I shall forthwith execute the

request contained in your letter from Fort Pitt, and forward the remarks on Mr. Jefferson's draught, by the next mail. I am sorry that it is not in my power to do it by this. The delay proceeded from an idea that the subject would have been previously decided in Kentucky, or not immediately resumed."

Thus we see that Mr. Brown, at the very time in which he is charged with being engaged in conferences with foreign ministers for the purpose of alienating his country from the American commonwealth, was assiduously and unostentatiously employed in retaining the talents of one of the greatest and best statesmen which America ever produced, in the aid of his countrymen towards forming a constitution for that country, best adapted to a coalition with the other states, and most congenial with the spirit of the federal government. He was engaged in this conference before the application of Kentucky to congress was defeated; & he resumed it immediately afterwards. Had he been desirous of forming a constitution which should separate Kentucky from the confederated states, would he have applied to James Madison, the great apostle of the union, to assist him in this scheme? Had he wished to organize Kentucky in such a manner that she would glide into a Spanish province, was Jefferson's draught a fit model for his purpose?

But the reader is desired to remember, that Mr. Madison was not only a great lawyer and a great statesman, but a citizen of Virginia, & well acquainted with the affairs of Kentucky. He knew the relation in which she stood to Virginia, and to the federal government. He it was who draughted the first act of separation; he was informed of every thing which had been done under it—He knew of the application to congress, of the defeat, and the occasion of it; and he was informed from the acts of the convention of July, that another convention was to meet in November, to form a constitution. With this information relative to the situation of the district, and a mind fully competent to the discernment of every obligation which could result from her relations and connections, he promised his immediate assistance to the convention of November, 1788, in forming a constitution for the government of Kentucky.

The reader is desired to recollect, that at the same time when Mr. Brown wrote to Col. M'Dowell, he wrote a letter to Col. Muter, which letter was obtained by James M. Marshall, as before stated and published in the Kentucky Gazette. This letter contained the same

account of the conference with Gardoque, which the letter to Col. M'Dowell did. Of this conference, I trust enough has been said. But there is another clause in the letter to Muter, which has been made the basis of an accusation of treason, and abundant invective against Mr. Brown. This clause is in these words: *"The question which the district will now have to determine upon, will be, whether it will be most expedient to continue the connection with the state of Virginia, or declare their independence, and proceed to frame a constitution of government. 'Tis generally expected, that the latter will be your determination; as you have proceeded too far to think of relinquishing the measure; and the interest of the district will render it altogether inexpedient to continue your present situation until an application for admission into the union can be made in a constitutional mode to the new government. This step will, in my opinion, tend to preserve unanimity, and will enable you to adopt, with effect, such measures as may be necessary to promote the interest of the district."*—(*Vide Palladium 20th August, and Kentucky Gazette 4th Sept.* 1806.)

Now it must be manifest to any one who reads Madison's letters, that Mr. Brown had communicated the same ideas to him, that he had to Col. Muter; and it must require great credulity to suppose, that if Mr. Brown had considered the contemplated separation not fully authorised by law, he would have communicated his project to Mr. Madison, and requested his co-operation. There never was a trait in Mr. Madison's public or private character, which could have encouraged an application of the kind; and even if his mind could have been acted on by improper motives, no possible inducement could have been held out to him. He had no interest in Kentucky, and Mr. Brown well knew that if he could have felt a bias, it must have been against her right to independence. This proves incontestably, that whatever *criminality* there might have been in the mode of proceeding suggested to Col. Muter, Mr. Brown had never discovered it. But not only did this latent treason escape the observation of Mr. Brown, but it never once occurred to Mr. Madison; for instead of denouncing Mr. Brown as a traitor, *"destitute of the fear of God, and instigated by the Devil,"* or humanely warning him, as an ignorant and misguided mortal, to desist from his design; he promised to assist him in it "forthwith," and regretted that any delay whatever should take place. Mr. Madison knew that Kentucky had repeatedly obtained the consent of his own state to this measure; he knew that she had

substantially obtained the assent of congress; and he knew that the very government which had required this assent as a condition of independence, had been the innocent cause of its not having been procured with all the ordinary formalities: and he never suggested a doubt, but that the district might lawfully do what she was about to perform; and he, it is believed, is as good a judge of right and wrong, whether moral, legal or political, as is the *Caledonian John Wood*, or his man *Joseph M. Street.*

I have only one more request to make of the reader, which is, that he will estimate the quantum of guilt which Harry Innes acquired, by neglecting to prosecute these conspirators, and which is chargeable to Thomas Todd for concealing the records of their conspiracy.

It has been repeatedly declared by the editors of the Western World, that theirs is no party paper. That it is not a party paper in the sense in which any other in the known world is, will be readily admitted by me. The editors of other papers are partial to particular dogmas in literature or politics; but they all agree in the great principles of practical morality and common decency; and a man abandoned in principles and profligate in manners, can expect no other reward for espousing their cause, than mere tolerance and distant civility. But with the editors of the Western World the case is directly reversed. It is with them no question what a man's politics are, or may have been, provided his mind is unprincipled, his heart corrupt, and his life profligate. The sympathy resulting from mingled depravity and mutual moral guilt, levels all political distinction, and attracts within a common vortex, the outcast of every party and traitors of every cause.

A periodical paper, independent of all regard to matter of fact, moral sentiment, public decency and private feeling is, it is believed, "a new thing on the earth;" and as the scheme of its establishment, and plan of its support must have originated in the deepest recesses of total depravity; a complete developement of the plans and projects of its editors, might exhibit the human character in an aspect in which it has never before appeared.

But such a developement is not the object of the author of this narrative. It may however be proper to remark, that a prominent trait in their policy was to terrify into an acquiescence with their statements every man whom they should nominate as a witness, and

to frighten into silence, all whom virtue might prompt, and talents enable to detect their falsehoods, and expose their depravity.

Thus when Governor Greenup and Col. M'Dowell peremptorily refused "to bear false witness" on their cause, the former was instantly attacked with a volley of low scurrility and beastly abuse, from which the most unprincipled men in the community turned away with aversion and disgust; and a battery of self-defeated calumny was for several weeks plied off against the latter. In the meantime the whole artillery of malicious falsehood, fabricated slander, and general invective, was marshalled against those who either verbally or in print had expressed a disbelief of their sentiments, or called on them for evidence. They had calculated that this manoeuvre would excite such an alarm that no man whom they should please to name as a witness, would thereafter dare to contradict them; that those who had commenced writing would desist, and those who had meditated commencing would never begin. But to analyze the feelings of a virtuous heart, is beyond the reach of moral depravity, and the event manifested the utter incapacity of a polluted soul to form a conjecture on the probable conduct of virtuous men. No man was frightened out of the truth or into a lie. Those who before had expressed their detestation and contempt of the editors, expressed it afterwards, and those who had begun to write against them followed up the attack with as much confidence and composure as they felt before these excrementitious insignia of terror and defiance were exhibited.

With those who believe in a religion which prohibits its professors from "bearing false witness," and requires them to live "holy, harmless, undefiled and separate from sinners," no arguments are necessary, to shew the outrageous impropriety of their patronizing a publication, whose basis is the ruin of the first principles of that religion, and a prostration of the most obvious duties which it inculcates.

Those who are inclined to consider the matter in a moral point of view *only*, are desired to reflect on the effects which must naturally be produced by supporting such an engine of depravity, in the hands of an abandoned and prostituted Junto. It evidently attracts, organizes and marshals in battle-array, against the cause of patriotism, of private virtue, and public decency, every thing flagitious, profligate and vile, which the country contains. It may safely be affirmed, that in this and the neighboring states, there cannot be found six full blooded scoundrels who are not either private abettors, or public advocates of this paper.

Hence those creatures who would otherwise act singly, and consequently but feebly, are by this means organized into a corporate body, cemented by all the sympathies of mutual depravity and emboldened by all the consciousness of collective guilt.

The politician who watches over the liberty of the press with vigilant and jealous regard is requested to consider, whether that liberty would not be rendered more beneficial to mankind by punishing every wilful publication of a known falsehood, *whether malicious or not*, and whether every benefit which the world could derive from that liberty will not be lost, if under a mistaken idea of impartiality a column of falsehood is allowed to be published for every column of truth, and a paragraph in support of vice, for every paragraph in defence of virtue. When such is the case, no man can rely on the press for either political or moral instruction; and the country where nothing is allowed to be printed, is on an equal footing with the country where nothing which is printed can be believed.

The citizens of this state are earnestly requested to consider the following facts. In 1788-9, all the incidents on which the charge of conspiracy has been fabricated were published to Kentucky and to the world. The citizens of the district had then before them all the evidence which these editors have ever promised to produce. Wilkinson's memorial was then publicly read—Brown's conference with Gardoque was then publicly reported, and his letter to Muter was printed in a public news-paper—yet the people of Kentucky manifested no sentiment of abhorrence against these men, but have uniformly displayed a cordial confidence in them and their adherents for the space of nearly twenty years. And are the present citizens of Kentucky prepared by countenancing and accrediting these accusations to declare to the world, that during all this time treachery and corruption have had so complete an ascendancy over their country, that not a single band could be organized for the support of virtue and patriotism. That at the very time their government came into existence the whole mass of the people were so utterly devoted to a band of traitors, that virtue could not find a solitary advocate. That the "still small voice" of *purity* speaking through the lips of Humphrey Marshall was no longer heard—That even his patriotism, "led a stray" by the powerful seduction of universal example, "enlisted under the banners of treachery," and supported

the election of a traitor, that they continued thus "dead in trespasses and sin," until fourteen years afterwards they obtained an happy resurrection through the "quickening grace" of ————————John Wood.

WILLIAM LITTELL practices Law in all the Superior Courts in Kentucky.

APPENDIX.

Extracts from the Journals of a Convention, begun and held at Danville, in Lincoln county, the 23d. day of May, 1785:—On which day, being the day appointed by the Convention held at Danville, December 27th, 1784:

No. I.

RESOLVED unanimously, as the opinion of this committee, That a petition be presented to the Assembly, praying that the said district may be established into a state, separate from Virginia.

Resolved unanimously, as the opinion of this committee, That this district, when established into a state, ought to be taken into union with the United States of America, and enjoy equal privileges in common with the said states.

No. II.

RESOLVED, That this Convention recommend it to their constituents, to elect deputies in their respective counties, to meet at Danville on the second Monday of August next, to serve in convention, and to continue by adjournment till the first day of April next, to take further under their consideration the state of the district.

Resolved unanimously, That the election of deputies for the proposed convention, ought to be on the principles of equal representation.

Resolved, That the petition to the assembly for establishing this district into a state, and the several resolves of the former and present convention, upon which the petition is founded, together with all other matters relative to the interest of the district, that have been under their consideration, be referred to the future convention, that such further measures may be taken thereon, as they shall judge proper.

To the Honourable the General Assembly of Virginia.

THE petition of a convention of the inhabitants of the District of Kentucky, begun and held at Danville, in Lincoln county, on Monday the twenty-third day of May, 1785:

HUMBLY SHEWETH,

That your petitioners having been deputed by the people, pursuant to the recommendation of a late convention, to take into consideration the propriety and expediency of making application to the legislature for having this district established into a separate state, to be taken into union with the United States; (as also the several grievances stated by that convention; and to adopt such measures thereon, and whatever else might come before them, as should appear most conducive to its interest) are unanimously of opinion—that the remote situation of the district from the seat of government, together with sundry other inconveniences, subjects the good people thereof to a number of grievances too pressing to be longer borne, and which cannot be remedied whilst the district continues a part of the state of Virginia; conceiving it to be not only the privilege, but the duty of all men to seek happiness by entering into any form of civil society, not injurious to others, that they may judge most conducive to this great end; at the same time being anxiously desirous to cultivate the most perfect harmony with our brethren in the other parts of the state, and when we are under the necessity of being separated from the parent, whose fostering hand we gratefully acknowledge, has formerly been extended to our infant settlements; wishing nothing more devoutly, than that her blessing may ever attend us: therefore, we are induced to pray, that, agreeable to the provisional clause in the constitution, the district of Kentucky may be established into a separate and independent state, to be known by the name of the Commonwealth of Kentucky; which we wish to take place under the following regulations, to wit:

That as soon as may be after the said state is established, a convention be authorized to assemble and adopt a constitution and form of government; that the several acts of assembly which may be in force at the time of separation, together with the common law of England, all statutes or acts of Parliament, made in aid of the common law, prior to the fourth year of the reign of James the first, which

are of a general nature, not local to that kingdom nor repealed or altered by the legislature of Virginia, continue to be the rule of decision, and be considered as in full force, so far as they are applicable to the district, until the same shall be altered by the legislative power of the commonwealth of Kentucky; and that as soon as conveniently may be, after the district is established into a state, an equal number of commissioners from Virginia and the said state, be appointed and authorized to settle and adjust the proportion of the state debt to be paid by each; and if the commissioners cannot agree, that the difference be referred to and settled by Congress, as provided by the articles of confederation and perpetual union.

Finally, we hope and expect that our representatives will cheerfully grant a request justified by the principles of our government, as well as by the necessities of our condition; and that by an act of separation we shall be placed in the situation best adapted for attaining the advantages of a free and well regulated government; and that we shall likewise be recommended to Congress to be taken into union with the United States of America, to enjoy equal privileges in common with them.

And your petitioners shall ever pray, &c.

To the inhabitants of the District of Kentucky.

FRIENDS AND FELLOW-CITIZENS,

WE your representatives, met in convention, in consequence of our appointment, beg leave to address you on a subject which we consider of the last importance to you, to ourselves, and to unborn posterity. In every case where it becomes necessary for one part of the community to separate from the other; duty to Almighty God, and a decent respect to the opinions of mankind, require that the causes which impel them thereto, should be clearly and impartially set forth.

We hold it as a self evident truth, that government is ordered for the ease and protection of the governed: and whenever these ends are not attained, by one form of government: it is the right, it is the duty of the people, to seek such other mode, as will be most likely to ensure to themselves and their posterity, those blessings to which by nature they are entitled.

In the course of our enquiries, we find that several laws have passed the legislature of Virginia, which, although of a general nature,

yet in their operation are particularly oppressive to the people of this district; and we also find, that from our local situation, we are deprived of many benefits of government, which every citizen therein has a right to expect; as a few facts will sufficiently demonstrate.

We have no power to call out the militia, our sure and only defence, to oppose the wicked machinations of the savages, unless in cases of actual invasion.

We can have no executive power in the district, either to enforce the execution of laws, or to grant pardons to objects of mercy; because such a power would be inconsistent with the policy of government, and contrary to the present constitution.

We are ignorant of the laws that are passed until a long time after they are enacted; and in many instances not until they have expired: by means whereof penalties may be inflicted for offences never designed, and delinquents escape the punishment due to their crimes.

We are subjected to prosecute suits in the High Court of Appeals at Richmond, under every disadvantage, for the want of evidence, want of friends, and want of money.

Our money must necessarily be drawn from us, not only for the support of civil government, but by individuals, who are frequently under the necessity of attending on the same.

Nor is it possible for the inhabitants of this district, at so remote a distance from the seat of government, ever to derive equal benefits with the citizens in the eastern parts of the state; and this inconvenience must increase as our country becomes more populous.

Our commercial interests can never correspond with, or be regulated by theirs, and in case of any invasion, the state of Virginia can afford us no adequate protection, in comparison with the advantages we might, (if a separate state,) derive from the *Federal union.*

On maturely considering truths of such great importance to every inhabitant of the district, with a firm persuasion that we were consulting the general good of our infant country, we have unanimously resolved, 'that it is expedient and necessary for this district to be separated from Virginia, and established into a sovereign independent state, to be known by the name of the "commonwealth of Kentucky," and taken into union with the United States of America.' In order to effect this purpose, we have agreed on a petition, to be presented to the legislature of Virginia, at their next session, praying that a

separation may take place; in which petition are fully set forth such terms as we thought beneficial to our infant country, and not inconsistent for Virginia to grant.

It is generally admitted that this district ought at some period not far distant, to be separated from the government of Virginia.

The only question then is, whether we are now of sufficient ability, either to fill the different offices of government, or to provide for its support? In answer to the first part of this objection, examples have taught us, that sound principles and plain sense suffice for every laudable purpose of government; and we generally find that the liberty of the subject and the laws of the land, are in the highest reverence, at the foundation and rise of states, before the morals of the people have been vitiated by wealth and licentiousness, and their understandings entangled in visionary refinements and chimerical distinctions: and as to the latter part, we have now in our power several valuable funds, which, if by *procrastination* we suffer to be exhausted, we shall be stripped of every resource but internal taxation, and that under every disadvantage: and therefore we do not hesitate to pronounce it as our opinion, that the present is preferable to any future period.

"By an act of the last session of assembly, we find, that the revenue law is now fully and immediately to be in force within the district, so that we shall not only pay a very considerable part of the tax for supporting the civil government of Virginia, but also be obliged to support our supreme court, and every other office we need in the district, at our own charge; and we are of opinion, that the additional expense of the salaries to a governor, council, treasurer and delegate to congress, will for a number of years be more than saved out of the funds before alluded to, without any additional tax on the people.

"To impress you still more with a sense of our regard to your interests, as a free people, we have determined not to proceed in a matter of such magnitude, without a repeated appeal to your opinions; we have therefore recommended the election of another convention, to meet at Danville on the second Monday in August next, to take further into consideration the state of the district, and the resolves of this and the preceding convention. In this election we hope you will be actuated by a serious sense of the important objects, which the proposed election is designed to promote."

Ordered, That the clerk of the convention transmit one copy of the petition and one copy of the address now agreed on, to the clerks of the several courts in the district, with a request that they be set up at their respective court-house doors.

Ordered, That the resolve of this convention, fixing the time of holding the several elections in the district, be annexed at the foot of the copies of the two addresses which are to be transmitted to the clerks of the several courts.

Resolved, That the number of members for each county, be as follows; for the county of Jefferson, six—for the county of Nelson, six—for the county of Lincoln, ten—for the county of Fayette, eight: and that the elections be held on the July court day of each county, at the courthouse.

No. III.

Extracts from the Journals of the Convention, held on Monday, the 8th day of August, 1785.

THE convention, according to the order of the day, resolved itself into a committee of the whole on the state of the district, and after some time spent therein, Mr. President resumed the chair, and Mr. Muter reported that the committee had had under consideration the matters to them recommitted, and had made several amendments, which having read in his place, and afterwards delivered in at the clerk's table; where the same were again read and agreed to, as follows, viz.

Your committee having maturely considered the important subject to them referred, are of opinion that the situation of this district, upwards of five hundred miles from the seat of the present government, with the intervention of a mountainous desart of two hundred miles passed only at particular seasons, and never without danger from hostile nations of savages, precludes every idea of a connection on republican principles, and originates many grievances; among which we reckon the following:

1st. It destroys every possibility of application to the supreme executive power, for support or protection in cases of emergency, and thereby *subjects the district to continued hostilities and depredations of*

the savages; relaxes the execution of the laws, delays justice, and tends to loosen and dissever the bonds of government.

2nd. It suspends the operation of the benign influence of mercy, by subjecting condemned persons, who may be deemed worthy of pardon, to tedious, languishing and destructive imprisonment.

3rd. It renders difficult and precarious the exercise of the first and dearest right of freemen—adequate representation—as no person properly qualified, can be expected, at the hazard of his life, to undergo the fatigue of long journeys, and to incur burthensome expenses, by devoting himself to the public service.

4th. It subjects us to penalties, and inflictions which arise from ignorance of the laws, many of which have their operation and expire before they reach the district.

5th. It renders a compliance with many of the duties required of sheriffs and clerks, impracticable; and exposes those officers, under the present revenue law, to inevitable destruction.

6th. It subjects the inhabitants to expensive and ruinous suits in the High Court of Appeals, and places the unfortunate poor, and men of mediocrity, compleatly in the power of the opulent.

Other grievances result from partial and retrospective laws, which are contrary to the fundamental principles of free government, and subversive of the inherent rights of freemen:—such are, 1st. the laws for the establishment and support of the district court, which, at the same time that we are subject to a general tax for the support of the civil list, and the erection of public buildings, oblige us to build our own court-house, jail and other buildings, by a special poll-tax imposed upon the inhabitants of the district, and leaves several officers of the court without any certain provision.

2nd. The law imposing a tax of five shillings per hundred acres, on lands previously sold, and directing the payment thereof into the register's office at Richmond, before the patent shall issue: the same principles which sanctify this law, would authorise the legislature to impose five pounds per acre on lands previously sold by government on stipulated conditions, and for which an equivalent hath been paid; and is equally subversive of justice as any of the statutes of the British parliament, that impelled the good people of America to arms.

3d. General laws, partial and injurious in their operation: such are the laws, 1st.—concerning entries and surveys on the western waters. 2. Concerning the appointment of sheriffs. 3d. For

punishing certain offences injurious to the tranquillity of this commonwealth,—which last law prohibits, while we experience all the calamities which flow from the predatory incursions of hostile savages, from attempting any offensive operation: a savage, unrestrained by any law, human or divine, despoils our property, murders our fellow-citizens, then makes his escape to the north-west side of the Ohio, is protected by this law.

Whereas all men are born equally free and independent, and have certain natural, inherent and unalienable rights; among which are the enjoying and defending life and liberty, acquiring, possessing and protecting property, and pursuing and obtaining happiness and safety.

Resolved therefore, That it is the indispensible duty of this convention, as they regard the prosperity and happiness of their constituents, themselves and posterity, to make application to the general assembly, at the ensuing session, for an act to separate this district from the present government forever, on terms honourable to both and injurious to neither; in order that it may enjoy all the advantages, privileges and immunities of a free, sovereign and independent republic.

Unanimously agreed to by all the members present, whose names are hereto annexed: Mr. Saml. M'Dowell, President, Mr. George Muter, Mr. Christopher Irvin, Mr. William Kennedy, Mr. Benjamin Logan, Mr. Caleb Wallace, Mr. Harry Innes, Mr. John Edwards, Mr. James Speed, Mr. James Wilkinson, Mr. James Garrard, Mr. Levi Todd, Mr. John Coburn, Mr. James Trotter, Mr. John Craig, Mr. Robert Patterson, Mr. Richard Terrell, Mr. George Wilson, Mr. Benjamin Sebastian, Mr. Philip Barbour, Mr. Isaac Cox, Mr. Isaac Morrison, Mr. Andrew Hynes, Mr. Mathew Walton, Mr. James Morrison, and Mr. James Rogers.

No. IV.

To the Honorable General Assembly of Virginia.

GENTLEMEN,

The subscribers resident in the county of Jefferson, Fayette, Lincoln, and Nelson, composing the district of Kentucky, being chosen at free elections held in these counties respectively by the free men of the same, for the purpose of constituting a convention, to take

into consideration, the general state of the district, and expressly to decide on the expediency of making application to your honorable body, for an act of separation—deeply impressed with the importance of the measure, and breathing the purest filial affection, beg leave to address you on the momentous occasion.

The settlers of this district region, taught by the arrangements of Providence, and encouraged by the conditions of that solemn compact for which they paid the price of blood, to look forward to a separation from the eastern parts of the commonwealth; have viewed the subject leisurely at a distance, and examined it with caution on its near approach:—irreconcileable as has been their situation to a connexion with any community beyond the Appalachian mountains, other than the federal union; manifold as have been the grievances flowing therefrom, which have grown with their growth and increased with their population; they have patiently waited the hour of redress, nor even ventured to raise their voices in their own cause until youth quickening into manhood, hath given them vigour and stability.

To recite minutely the causes and reasoning which have directed and will justify this address, would, we conceive, be a matter of impropriety at this juncture. It would be preposterous for us to enter upon the support of facts and consequences, which we presume are incontestable; our sequestered situation from the seat of government, with the intervention of a mountainous desert of two hundred miles, always dangerous, and passable only at particular seasons, precludes every idea of a connexion on republican principles. The patriots who formed our constitution, sensible of the impracticability of connecting permanently in a free government, the extensive limits of the commonwealth, most wisely made provision for the act which we now solicit.

To that sacred record we appeal.—'Tis not the ill-directed or inconsiderate zeal of a few, 'tis not that impatience of power to which ambitious minds are prone; nor yet the baser considerations of personal interest, which influences the people of Kentucky; directed by superior motives, they are incapable of cherishing a wish unfounded in justice; and are now impelled by expanding evils, and irremediable grievances, universally seen, felt and acknowledged, to obey the irresistible dictates of self-preservation, and seek for happiness by means honorable to themselves, honorable to you, and injurious to neither.

We therefore, with the consent, and by the authority of our constituents, after the most solemn deliberation, being warned of every consequence which can ensue, for them, for ourselves, and for posterity unborn—do pray that an act may pass at the ensuing session of assembly, declaring and acknowledging the sovereignty and independence of this district.

Having no object in view but the acquisition of that security and happiness which may be attained by scrupulous adherence to principles of private justice, and public honor; we should most willingly at this time enter into the adjustment of the concessions which are to be the condition of our separation, did not our relative situation forbid such negociation, the separation we request being suggested by necessity and being consonant to every principle of reason and justice, we are persuaded will be cheerfully granted, and that we shall be as cheerfully received into the continental union on the recommendation of our parent state.

Our application may excite a new spectacle in the history and politics of mankind. A sovereign power solely intent to bless its people, agreeing to a dismemberment of its parts, in order to secure the happiness of the whole; and we fondly flatter ourselves, from motives not purely local, it is to give birth to that catalogue of great events which we persuade ourselves are to diffuse throughout the world, the inestimable blessings, which mankind may derive from the American revolution.

We firmly rely that the undiminished lustre of that spark which kindled the flame of liberty, and guided the United States of America to peace and independence, will direct the honorable body to whom we appeal for redress of manifest grievances, to embrace the singular occasion reserved for them by divine providence, to originate a precedent which may liberalize the policy of nations, and lead to the emancipation of enslaved millions.

In this address we have discarded the complimentary style of adulation and insincerity. It becomes freemen, when speaking to freemen, to employ the plain, manly, unadorned language of independence, supported by conscious rectitude.

No. V.

Resolved, That two commissioners be appointed to have the address now agreed on preferred to the next general assembly, and to use their endeavors to give it success.

George Muter and Harry Innes, esquires, were unanimously appointed commissioners to have the address now agreed on preferred to the next general assembly.

To the inhabitants of the District of Kentucky.

FRIENDS AND COUNTRYMEN,

Your representatives in convention having completed the important business for which they were specially elected, feel it their duty before they rise, to call your attention to the calamities with which our country appears to be threatened—*blood has been spilt from the eastern to the western extremity of the district*, accounts have been given to the convention from Post St. Vincennes, which indicate a disposition in the savages for general war; in the mean time if we look nearer home, we shall find our borders infested, and constant depredations committed on our property. Whatever may be the remote designs of the savages, these are causes sufficient to rouse our attention, that we may be prepared not only to defend but punish those who unprovoked offend us. God and nature have given us the power, and we shall stand condemned in the eyes of Heaven and mankind, if we do not employ it, to redress our wrongs and assert our rights.

The Indians are now reconnoitering our settlements in order that they may hereafter direct their attacks with more certain effect, and we seem patiently to await the stroke of the tomahawk; strange indeed it is, that although we can hardly pass a spot, which does not remind us of the murder of a father, a brother or deceased friend, we should take no single step for own preservation: Have we forgot the surprise of Bryan's or the shocking destruction of Kinchelo's station, let us ask you? Ask yourselves, what there is to prevent a repetition of such barbarous scenes? five hundred Indians might be conducted undiscovered, to our very thresholds, and the knife

may be put to the throats of our sleeping wives and children. For shame—let us rouse from our lethargy, let us arm, associate, and embody—let us call upon our officers to do their duty, and determine to hold in detestation and abhorrence, and to treat as enemies to the community, every person who shall withhold his countenance and support, of such measures as may be recommended for our common defence;—let it be remembered that a stand must be made somewhere: not to support our present frontier would be the height of cruelty as well as folly; for should it give way, those who now hug themselves in security, will take the front of danger, and we shall in a short time be huddled together in stations; a situation in our present circumstances, scarcely preferable to death—let us remember that supineness, and inaction may entice the enemy to general hostilities—whilst preparation and offensive movements will disconcert their plans, drive them from our borders, secure ourselves, and protect our property.

Therefore, *resolved*, that the convention in the name & behalf of the people, do call on the lieutenants or commanding officers of the respective counties of this district, forthwith to carry into execution the law for regulating and disciplining the militia.

Resolved, That it be recommended to the officers to assemble in their respective counties, and concert such plans as they may deem expedient for the defence of our country, or for carrying expeditions against the hostile nations of Indians.

No. VI.

An Act concerning the erection of the District of Kentucky into an independent State.

Whereas it is represented to be the desire of the good people inhabiting the district known by the name of the Kentucky District, that the same should be separated from this Commonwealth whereof it is a part, and be formed into an independent member of the American confederacy, and it is judged by the General Assembly that such a partition of the Commonwealth is rendered expedient by the remoteness of the more fertile, which must be the more populous part

of the said district, and by the interjacent natural impediments to a convenient and regular communication therewith:

Be it enacted by the General Assembly, That in the month of August next, on the respective court days of the counties within the said district, at the respective places of holding courts therein, representatives to continue in appointment for one year, and to compose a convention, with the powers, and for the purposes hereinafter mentioned, shall be elected by the free male inhabitants of each county in like manner as delegates to the general assembly have been elected within the said district, in the proportions following: In the county of Jefferson shall be elected five representatives, in the county of Nelson five representatives, in the county of Fayette five representatives, in the county of Bourbon five representatives, in the county of Lincoln five representatives, in the county of Madison five representatives, and in the county of Mercer five representatives. That full opportunity may be given to the good people, of exercising their right of suffrage on an occasion so interesting to them, each of the officers holding such elections, shall continue the same from day to day, passing over Sunday, for five days, including the first day, shall cause this act to be read on each day, immediately preceding the opening of the election, at the door of the court-house, or other convenient place, and shall fix up two copies at least of this act, in the most public situations at the place of election, twenty days before the commencement thereof. Each of the said officers shall deliver to each person duly elected a representative, a certificate of his election, and shall moreover transmit a general return to the clerk of the supreme court of the district, to be by him laid before the convention. For every neglect of any of the duties hereby enjoined on such officers, he shall forfeit one hundred pounds, to be recovered by action of debt, by any person suing for the same. The said convention shall be held at Danville, on the 4th Monday of September, & as soon as two thirds of the representatives shall be convened, they shall and may proceed, after choosing a president and other proper officers, and settling the proper rules of proceeding, to consider, and by a majority of voices to determine, whether it be expedient for, and be the will of the good people of the said district, that the same be erected into an independent state, on the terms and conditions following:

First. That the boundary between the proposed state and the

state of Virginia, shall remain the same as at present separates the district from the residue of the commonwealth.

Second. That the proposed state shall take upon itself a just proportion of the public debt of this commonwealth.

Third. That all private rights and interests in lands within the said district, derived from the laws of Virginia, prior to such separation, shall remain valid and secure under the laws of the proposed state, and shall be determined by the laws now existing in this state.

Fourth. That the lands within the proposed state of non-resident proprietors, shall not in any case be taxed higher than the lands of residents at any time prior to the admission of the proposed state to a vote by its delegates in Congress, where such non-residents reside out of the United States; nor at any time either before or after such admission, where such non-residents reside within this commonwealth, within which this stipulation shall be reciprocal; or where such non-residents reside within any other of the United States, which shall declare the same to be reciprocal within its limits; nor shall a neglect of cultivation or improvement of any land within either the proposed state or this commonwealth, belonging to non-residents, citizens of the other, subject such non-residents to forfeiture or other penalty, within the term of six years after the admission of the said state into the Foederal Union.

Fifth. That no grant of land, nor land warrant to be issued by the proposed state, shall interfere with any warrant heretofore issued from the land office of Virginia, which shall be located on land within the said district now liable thereto, on or before the first day of September, one thousand seven hundred and eighty-eight.

Sixth. That the unlocated lands within the said district, which stand appropriated by the laws of this commonwealth to individuals or descriptions of individuals, for military or other services, shall be exempt from the disposition of the proposed state, and shall remain subject to be disposed of by the commonwealth of Virginia, according to such appropriation, until the first day of September, one thousand seven hundred and eighty-eight, and no longer; and thereafter the residue of all lands remaining within the limits of the said district, shall be subject to the disposition of the proposed state.

Seventh. That the use and navigation of the river Ohio, so far as the territory of the proposed state, or the territory which shall remain within the limits of this commonwealth, lies thereon, shall be

free and common to citizens of the United States, and the respective jurisdictions of this commonwealth, and of the proposed state, on the river as aforesaid, shall be concurrent only with the states which may possess the opposite shores of the said river.

Eighth. That in case any complaint or dispute shall at any time arise between the commonwealth of Virginia and the said district, after it shall be an independent state, concerning the meaning or execution of the foregoing articles, the same shall be determined by six commissioners, of whom two shall be chosen by each of the parties, and the remainder by the commissioners so first appointed.

And be it further enacted, That if the said convention shall approve of an erection of the said district into an independent state, on the foregoing terms and conditions, they shall & may proceed to fix a day, posterior to the first day of September, one thousand seven hundred and eighty-seven, on which the authority of this commonwealth, and of its laws, under the exceptions aforesaid, shall cease and determine forever, over the proposed state, and the said articles become a solemn compact, mutually binding on the parties, and unalterable by either without the consent of the other. *Provided however,* That prior to the first day of June, one thousand seven hundred and eighty-seven, the United States in Congress, shall assent to the erection of the said district into an independent state, shall release this commonwealth from all its federal obligations arising from the said district, as being part thereof; and shall agree that the proposed state shall immediately after the day to be fixed as aforesaid, posterior to the first day of September, one thousand seven hundred and eighty-seven, or at some convenient time future thereto, be admitted into the Foederal Union. And to the end that no period of anarchy may happen to the good people of the proposed state, it is to be understood that the said convention shall have authority to take the necessary provisional measures for the election and meeting of a convention at some time prior to the day fixed for the determination of the authority of this commonwealth, and of its laws, over the said district, and posterior to the first day of June, one thousand seven hundred and eighty-seven, aforesaid, with full power and authority to frame and establish a fundamental constitution of government for the proposed state, and to declare what laws shall be in force therein, until the same shall be abrogated or altered by the legislative authority, acting under the constitution, so to be framed and established.

This act shall be transmitted by the executive to the delegates representing this commonwealth in Congress, who are hereby instructed to use their endeavours to obtain from Congress a speedy act to the effect above specified.

Jan. 6, 1786. *Passed the House of Delegates.*

JOHN BECKLEY, C. H. D.

Jan. 10, 1786. *Passed the Senate.*

H. BROOKE, C. S.

No. VII.

Extract of a letter from John Marshall, Esq. to Colonel Thomas Marshall.

"The act is not precisely such as I wished it to be, nor is it conformable to the resolutions of the committee before whom I appeared, but it may perhaps be formed on more prudent and cautious principles; on principles which will finally conduce more to the peace and harmony of the district, than had my wishes (which were to enable the present convention to decide the question finally) prevailed. Those, sir, who introduced and passed the law, reasoned thus: the power delegated to the convention by the people, to decide upon a separation, was limited in point of time to a decision to be made in such time that Congress might consider and determine on the admission of your state into the union, by the first day of June, 1787, that an existence for twelve months was given for other purposes pointed out in the law, that as you are very much divided among yourselves, and there does not appear to be in the minority a disposition to submit it with temper to the decision of the majority, and the measures of the convention, in consequence of a defect in the original law, would be liable to some objection, the most safe, unexceptionable & accommodating plan is, to pass a law, in which the defects of the former act may be corrected, and which shall enable the present convention either to sit till their term has expired, or to call immediately a new convention, to the decisions of which the disappointed can make no objection."

No. VIII.

Debates in the Virginia Convention, June, 1788, p. 128. Extract from the Speech of Mr. Munroe.

WHILST the powers were in force, a representative from Spain arrived, authorized to treat with the United States on the interfering claims of the two nations, respecting the Mississippi, and the boundaries, and other concerns wherein they were respectively interested. A similar commission was given to the honourable the secretary of foreign affairs on the part of the United States, with these ultimata; "that he enter into no treaty, compact or convention whatever, with the said representative of Spain, which did not stipulate our right to the navigation of the Mississippi, and the boundaries, as established by our treaty with Great Britain." Eight or ten months elapsed without any communication of the progress of the treaty being made to Congress. At length, a letter was received from the secretary, stating that difficulties had arisen in his negociation with the representative of Spain, which in his opinion should be so managed, as that even their existence should remain a secret for the present, and proposing that a committee be appointed with full power to direct and instruct him in every case relative to the proposed treaty. The object of this proposition was to disengage him from the ultimata already mentioned in his existing instructions. The secretary, Mr. Jay, being at length called before congress to explain the difficulties mentioned in his letter, presented to their view the project of a treaty of commerce, containing, as he supposed, advantageous stipulations in our favour in that line, in consideration for which we were to contract to forbear the use of the navigation of the river Mississippi for the term of twenty-five or thirty years, and earnestly advised our adopting it; he urged that the commercial project was a beneficial one, and should not be neglected—that a stipulation to forbear the use on her part, contained an acknowledgement of the right in the United States—that we were in no condition to take the river, and therefore gave nothing for it. The delegates of the seven eastermost states voted that the ultimata in the secretary's instructions, be repealed, and it was entered on the journal by the secretary of Congress, that the question was carried, although nine states were necessary by

the Federal constitution, to give an instruction. The animated pursuit that was made of this object, required, and I believe received, as firm an opposition. The southern states were on their guard, and warmly opposed it.

Circular letter directed to the different courts in the Western Country.

KENTUCKY, DANVILLE, March 29th. 1787.

Gentlemen,

A RESPECTABLE number of the inhabitants of this district, having met at this place, being greatly alarmed at the late procedure of Congress, in proposing to cede to the Spanish court the navigation of the Mississippi river, for twenty-five or thirty years, have directed us to address the inhabitants on the western waters, and inform them of the measures which it is proposed for this district to adopt.

The inhabitants of the several countries in this district, will be requested to elect five members in each county, to meet at Danville on the first Monday in May, to take up the consideration of this project of congress—to prepare a spirited, but decent, remonstrance against the cession; to appoint a committee of correspondence, and to communicate with one already established on the Monongahalia, or any other that may be constituted—to appoint delegates to meet representatives from the several districts on the western waters, in convention, should a convention be deemed necessary—and to adopt such other measures, as shall be most conducive to our happiness. As we conceive that all the inhabitants residing on the western waters, are equally affected by this partial conduct of congress, we doubt not but they will readily approve of our conduct, and chearfully adopt a similar system, to prevent a measure which tends to almost a total destruction of the western country. This is a subject that requires no comment—the injustice of the measure is glaring—and as the inhabitants of this district wish to unite their efforts, to oppose the cession of the navigation of the Mississippi, with those of their brethren residing on the western waters, we hope to see such an exertion made, upon this important occasion, as may convince Congress that the inhabitants of the western country are united in the opposition, and

consider themselves entitled to all the privileges of freemen, and those blessings procured by the revolution; and will not tamely submit to an act of oppression, which would tend to a deprivation of our just rights and privileges.

We are, Gentlemen,
With respect,
Your most obedient servants,

GEORGE MUTER,
HARRY INNES,
JOHN BROWN,
BENJAMIN SEBASTIAN.

A further extract from the letter of John Marshall.

THE negociation which has been opened with Spain, for ceding the navigation of the Mississippi—a negociation so dishonourable and injurious to America, so destructive of the natural rights of the western world, is warmly opposed by this country, and for this purpose the most pointed instructions are given to our delegates in congress. I persuade myself that this negociation will terminate in securing, instead of ceding that great point.

Resolutions passed by the House of Delegates, Virginia, November †32, 1787.

RESOLVED unanimously, That the free use and navigation of the western streams and rivers of this commonwealth, and of the waters leading into the sea, do of right appertain to the citizens thereof, and ought to be considered as guaranteed to them by the laws of God & nature, as well as compact.

Resolved unanimously, That every attempt in congress, or elsewhere, to barter away such right, ought to be considered as subversive of justice, good faith, and the great foundations of moral rectitude, and particularly of the principles which gave birth to the

†Should read 12.

late revolution, as well as strongly repugnant to all confidence in the federal government, and destructive to its peace, safety, happiness, and duration.

Resolved, That a committee ought to be appointed, to prepare instructions to the delegates representing this state in congress, to the foregoing import; and to move that honorable body to pass an act, acknowledging the right of this state, and that it transcends their power to cede or suspend them, and desiring the said delegates to lay before the general assembly, such transactions as have taken place respecting the cession of the western navigation.

[*Kentucky Gazette, January 26, 1788.*]

No. IX.

Extract of a Letter from Harry Innes to John Brown, a member of Congress, dated Danville, April 4th, 1788.

THE representations of Gov. Henry, were strengthened and supported by Col. Harmer of the continental troops, in consequence of which congress resolved, on the 20th of October, 1786, to increase the army to 2040 non-commissioned officers and privates: the quota of Virginia was 60 horse, who were recruited and marched to Winchester in the spring of 1787, and there soon after disbanded.

No. X.

RICHMOND, May 1st. 1787.

SIR,

WE have reason to believe that the late hostilities, committed on the Indians, have roused their resentment. It is the duty of government to prevent and punish, if possible, all unjust violences. I beg leave, therefore, to urge you to institute the proper legal inquiries for vindicating the infractions of peace.

I am, Sir,
Your most obt. servt.

EDM: RANDOLPH.

Mr. Henry Innes,
Attorney-General,
Kentucky.

Kentucky, July 21st, 1787.

Sir,

Your excellency's letter of the 1st of May, was delivered to me on the 6th inst. and after reflecting on the contents, I feel myself constrained to ask of the executive in what capacity they view me? because from the tenor of your letter, it would be construed that I was vested with some executive powers; your letter directs me "to institute the proper legal enquiries for vindicating the infractions of the peace"—how am I to proceed on this business from so vague a direction, I know not. In my official capacity I cannot do it, in a private capacity it would render me odious; but of whom I am to enquire, or against whom your excellency wishes a prosecution to be instituted, your letter is silent.

If your excellency calls upon me in a private capacity, I shall be ever ready and willing to give you such information as far as may come to my knowledge of any matter in which the weal of the state may be interested; and shall now give you the information on the subject which your letter refers to, viz. Col. John Logan's excursion in February last, and some others.

Indians had made their appearance upon our south eastern frontiers at several different times in the fall and winter; some of our hunters had been attacked, and early in February one of our citizens killed at his own house; this induced Col. John Logan, the then commanding officer of Lincoln, to raise his corps to range on the waters of Cumberland, and to rendezvous at or near the place where the person had been killed, which was on a branch of Green river. Within a few miles of the place of rendezvous, Col. Logan came upon the trail of the Indians, who it was supposed had committed the murder; he followed and overtook them, killed seven and got possession of the skins and horses they had along, among which was a valuable mare of mine and a horse belonging to a Mr. Blain, of Lincoln, also a rifle gun which was well known to belong to a person who was murdered in the wilderness in October last on his journey to this district.—Judge from these facts of the innocence of the Cherokees.

Since the excursion by Col. Logan, one hath been made by some volunteers from Fayette and Bourbon under the command of Col. Robert Todd, to the Scioto, in consequence of information received from the Shawnees of the hostile conduct of a small tribe said to be Cherokees, who had settled on Paint creek, upon this occasion three were killed and seven taken who have since made their escape.

Last fall an excursion was made to the Saline by some volunteers from Nelson, under Capt. Hardin, who fell in with some Indians, three or four of whom he killed and put the others to flight.

Another hath been made from Jefferson in June last under Maj. Oldham, upon the waters of the Wabash, but nothing was done.

The Indians have been very troublesome on our frontiers, and still continue to molest us, from which circumstance I am decidedly of opinion that this western country will in a few years act for themselves and erect an independent government; for under the present system we cannot exert our strength, neither does congress seem disposed to protect us, for we are informed that those very troops which congress directed the several states to raise for the defence of the western country, are disbanded. I have just drop'd this hint to your excellency for matter of reflection. If some step is not taken for our protection a little time will prove the truth of the opinion.

I have the honor to be, &c. &c.

HARRY INNES.

Governor Randolph.

No. XI.

In Council, June 5th, 1787.

The Lieutenant Governor laid before the board letters which came to him by express, from the county lieutenants of Lincoln, Jefferson and Fayette, giving information that the western Indians had lately and at different times, committed hostilities on the inhabitants of Kentucky.

Whereupon, it is advised, that copies of the several letters and papers, be forwarded to the delegates of this state in Congress.

That Colonel Benjamin Logan be directed immediately to convene the county lieutenants or commanding officers of the different counties composing the district of Kentucky, and with their advice,

to form some system for the defence of that district; cautiously avoiding offensive operations, and taking care that the troops, which it may be necessary to embody, for carrying into execution any plan of defence that may be adopted, *do on no occasion go without the limits of the state, except in the immediate pursuit of an invading enemy.*

Attest A. BLAIR, C. C.

No. XII.

By the United States, in Congress assembled.

July 21st, 1787.

EXTRACT.

RESOLVED, That the Secretary at War place the troops of the U. S. in such positions as shall afford the most effectual protection to the frontier inhabitants of Pennsylvania & Virginia from the incursions & depredations of the Indians, for preventing intrusions on the federal lands, and promoting a favourable issue to the intended treaty; to this end, one company and an half shall remain at Venango, Fort Pitt, and Fort M'Intosh, one be posted on the Muskingham, one on the Miami, three at post St. Vincents, and the remaining troops at the rapids of the Ohio, subject, however, to such changes and alterations as the commanding officer shall judge the good of the service may require.

Resolved, That the executive of Virginia be requested to give orders to the militia in the district of Kentucky, to hold themselves in readiness to unite with the federal troops in such operations as the officer commanding them may judge necessary for the protection of the frontiers, and that on the application of the commanding officer of the federal troops, the said executive be requested to give orders that a part of the said militia, not exceeding one thousand, be embodied and take such positions, as the said commanding officer shall direct, for acting in conjunction with the federal troops, in protecting and defending the frontier inhabitants, and in making such expeditions against the Indians, in case they continue hostile, as Congress shall hereafter order and direct.

CHA: THOMPSON, Sec'ry.

In Council, August 14th, 1787.

Sir,

Inclosed is a copy of an act of Congress, providing for the defence of the western frontier.

You will in conformity to this act, hold your militia in readiness at all times to unite with the federal troops in such operations as the officer commanding them shall judge to be necessary.

You are not, however, to consider yourself at liberty to embody any part of your militia for the purpose of carrying into execution the above mentioned act, until you receive special orders from the executive for that purpose.

I am, Sir,
Your obedient servant,

BEVERLY RANDOLPH.

To the County Lieutenant, or commanding officer of Lincoln.

No. XIII.

Extracts from the Journals of a Convention, begun and held at Danville, in the county of Mercer, on Monday, the 17th day of September, 1787.

Resolved, That this convention will to-day resolve itself into a committee of the whole, to take into consideration the expediency of a separation from the state of Virginia.

Ordered, that the two acts of assembly concerning the erection of the district of Kentucky into an independent state, also, a letter from the lieutenant governor to Colonel Benjamin Logan, dated the 5th of June, 1787, also, the resolve of the council of Virginia, dated June the 5th, 1787; also, the resolutions of the United States in Congress assembled, dated July the 21st. 1787; also a letter from the lieutenant governor of Virginia, dated August the 14th, 1787, to the county lieutenant of Lincoln; also a letter from the governor of Virginia, dated the first of May, 1787, to the attorney-general of this district & an ordinance of Congress for the government of the territory of the U. States, northwest of the river Ohio, be referred to the committee

of the whole convention, for their information with respect to the expediency of a separation from the state of Virginia.

Resolved, *Nemine Contradicente*, by the representatives of the good people of the district of Kentucky, in Convention assembled, that it is expedient for, and the will of the same, that the said district be erected into a separate and independent state, on the terms and conditions specified in the two acts of assembly, one entitled, "an act concerning the erection of the district of Kentucky into a separate and independent state"—the other entitled, "an act making farther provision for the erection of the district of Kentucky into an independent state."

Resolved, That this convention do fix the thirty-first day of December, one thousand seven hundred and eighty-eight, to be the time on which the authority of the commonwealth of Virginia, and of its laws, over the district of Kentucky, shall cease and determine forever, under the exceptions specified in the act entitled "an act concerning the erection of the district of Kentucky into an independent state."

To the Honourable the Congress of the United States of America.

The Representatives of the good people of Kentucky, in Convention assembled, pursuant to an act of the General Assembly of Virginia, intitled "an act concerning the erection of the district of Kentucky into an independent state," having determined that it is expedient that the said district should be erected into a sovereign independent state, on the terms and conditions specified in the said act, and that the jurisdiction and authority of Virginia and her laws, shall cease and determine forever over the said district, on the 31st. day of December, 1788, do therefore beg leave to address your honourable body on the important subject.

Happiness we all eagerly and incessantly pursue—this is the mark to which our aim is, and while we continue to be rational creatures, will forever be directed.—If the inhabitants of the district of Kentucky, connected with the commonwealth of Virginia, cannot, from the peculiarity of their situation, obtain this great object, it is natural, it is reasonable to wish for a change.

This separation we anxiously desire to effect in the regular constitutional mode, prescribed in the law under which we act, but so great

are our present strivings, which must grow with our growth and increase with our population, that should we be unsuccessful in this application, we shall not consider ourselves in any manner answerable for the future conduct of our constituents.

We assure your honours, that our wish to separate from our parent state, does not proceed from any impatience under the necessary restraints of her government, which we think wisely organized and well administered: but, our remote situation from the seat of that government, and the many interjacent natural impediments, prevent our enjoying equal advantages with our eastern brethren, and preclude the idea of a connection on republican principles.

Therefore, implicitly confiding in the justice and liberality of Congress—conscious that their cares are equally extended to every part of the confederacy. Sensible that, as it is their duty, it is their inclination to relieve the distresses and to communicate happiness to all the citizens of America.

We, in conformity to the act of assembly, before referred to, & agreeable to a subsequent act entitled "an act making further provision for the erection of the district of Kentucky into an independent state, apply to your honours to ratify the compact solemnly entered into between the state of Virginia and the district of Kentucky, by declaring your assent to the erection of the said district into an independent state, on the terms and conditions stipulated in the said acts, and that the said district when erected as aforesaid, be permitted to enjoy equal privileges with the other of the United States of America, and be stiled the Commonwealth of Kentucky.

As it is of great consequence to the good people of Kentucky, to have the earliest information of the decision of your honours, on this important and to them deeply interesting subject, we most earnestly entreat you to enter on the consideration thereof, as soon as the other great affairs of state, which demand your attention, will permit; and that when decided, you will be pleased to transmit to us the result of your deliberations, in order that the convention to be elected to form a constitution of government, may have time to accomplish that arduous and momentous business, before the expiration of the period fixed on by us, when the authority of the commonwealth of Virginia and of its laws, under certain exceptions, shall cease and determine forever.

Ordered, That the clerk do make an extract from the journals of this convention, of the two resolutions relative to the expediency of a separation, and the time of its commencement; and when signed by the President and attested by the clerk, that these resolutions be enclosed with the address aforesaid.

Ordered, That another copy of the said resolutions, signed and attested in like manner, be inclosed by the President in a letter addressed to his Excellency the Governor of Virginia, that he may have official notice of the determinations of this convention.

Ordered, That the president do address the representatives from this district to the general assembly, requesting that they will use their endeavours to have an inhabitant of the district appointed a delegate to Congress for the ensuing year.

No. XIV.

RESOLVED, As the opinion of this convention, that a convention shall be elected, with full power and authority to frame and establish a fundamental constitution of government, for the proposed state, and to declare what laws shall be in force therein, until the same shall be abrogated or altered by the legislative authority, acting under the constitution so to be framed and established.

Resolved, That in the month of April next, on the respective court days of the counties within the said district, & at the respective places of holding courts therein, representatives to continue in appointment until the 31st. day of December, 1788, to compose the said convention, shall be elected within the said district, by the free male inhabitants of each county, in the like manner as the delegates to the general assembly have been elected, in the proportions following:—in the county of Jefferson shall be elected five representatives—in the county of Nelson five representatives—in the county of Fayette five representatives—in the county of Bourbon five representatives—in the county of Lincoln five representatives—in the county of Madison five representatives—and in the county of Mercer five representatives. That full opportunity may be given to the good people of exercising their right of suffrage on an occasion so interesting to them, each of the officers so holding the elections, shall continue the same from day to day for five days, including the first day, and shall cause these resolutions to be read,

immediately preceding the opening the election, at the door of the court-house, or other convenient place, and that Mr. Bradford be requested to publish the same in his Kentucky Gazette six weeks successively, immediately preceding the time of holding the said elections.

No. XV.

United States in Congress assembled.

February 29th, 1788.

An address from the representatives of the people of Kentucky in convention met, being read, and a motion being made thereon by the delegates of Virginia;

Ordered, That the said address and motion be referred to a committee of the whole, to sit on Tuesday next.

March 4th, 1788.

According to the order of the day congress was resolved into a committee of the whole;

Mr. Otis was elected to the chair.

After some time the president resumed the chair, and Mr. Otis reported that the committee of the whole had taken into consideration the subject referred to them, but not having come to a resolution, desire leave to sit again, which was granted.

May 30th, 1788.

According to an order of the day, congress was resolved into a committee of the whole on a petition in behalf of the inhabitants of the district of Kentucky, and a motion made thereon.

Mr. Otis in the chair.

After some time the president resumed the chair, and the chairman reported that the committee of the whole have taken into consideration the subject referred to them, but not having time to go through with the same desire leave to sit again.

Resolved, That congress on Monday next, be resolved into a committee of the whole, to proceed on the said business.

June 2d, 1788.

According to order the house was resolved into committee of the whole, and after some time the president resumed the chair, and

Mr. Otis reported that the committee of the whole had taken into consideration the subject referred to them and agreed thereon to report,

That in their opinion it is expedient that the district of Kentucky be erected into an independent state, and therefore they submit the following resolution, That the address and resolutions from the district of Kentucky, with the act of the legislature of Virginia therein specified be referred to a committee consisting of a member from each state, to prepare and report an act for acceding to the independence of the said district of Kentucky and for receiving "the same into the union as a member thereof in a mode conformable to the articles of confederation."

June 3d, 1788.

Congress took into consideration the report made yesterday from the committee of the whole, & on the question,

Resolved, That congress agreed to the said report—

Congress thereupon proceeded to the election, and the ballots being taken, the following members were elected and appointed to compose the committee:

Mr. Williamson	from	North-Carolina,
Mr. Hamilton		New-York,
Mr. Arnold		Rhode-Island,
Mr. Baldwin		Georgia,
Mr. Dana		Massachusetts,
Mr. Kearny		Delaware,
Mr. Gilman		New-Hampshire,
Mr. Brown		Virginia,
Mr. Clark		New-Jersey,
Mr. Tucker		South-Carolina,
Mr. Reid		Pennsylvania.

†June 2d, 1788.

The committee to whom was referred the report from the committee of the whole on the address and resolutions from the district of Kentucky, being at their desire discharged, thereupon a motion was made by Mr. Brown, seconded by Mr. Carrington, for the purpose of ratifying and confirming the compact between the state of Virginia and the said district.

Ordered, That the consideration of this motion be the order of the day for to-morrow.

†Should read July.

July 3d, 1788.

The order of the day being called for, the motion of Mr. Brown was read in the words following:

"Whereas it appears to congress that the state of Virginia, by two acts of the legislature thereof, one entitled "an act concerning the erection of the district of Kentucky into an independent state," passed at their October session, in the year 1785, the other passed at their October session, in the year 1786, entitled "an act making further provision for the erection of the district of Kentucky into an independent state," hath entered into a solemn compact with that part of the said state called the district of Kentucky, permitting the same to be erected into a separate and independent state, to be admitted into union with the United States, as a federal member thereof, upon certain terms and conditions in the said act stipulated; and it further appearing to congress that the said district in convention assembled, did in conformity to the said acts, by certain resolutions entered into on the 22d day of September, 1787, determine that it was expedient that the said district should be erected into an independent state on the terms and conditions specified in said acts; and did present to congress an address praying to be admitted into union with the United States, as a federal member; and whereas it appears to congress to be just and reasonable that the application of the said district of Kentucky should be complied with:

Resolved, therefore, that the United States in Congress assembled, do ratify and confirm the compact entered into between the state of Virginia and the district of Kentucky, agreeably to the acts and resolutions aforesaid, and that the said district be admitted into union with the United States as an independent federal member, on the first day of January, 1789, and be stiled the Commonwealth of Kentucky.

Resolved, That congress will release the state of Virginia from all federal obligations arising within the said district after the said first day of January, 1789, and from such part of her quota of the continental debt as shall be apportioned to the said district whenever the same shall have been ascertained agreeably to the stipulations of the compact aforesaid.

Resolved, That the said district shall be admitted to a representation in congress after the said first day of January, 1789; provided,

from an accurate census it shall appear that the said district contains sixty thousand inhabitants."

A motion was made by Mr. Dana seconded by Mr. Tucker to postpone the consideration of the foregoing motion, in order to take up a motion which was read, and on the question to postpone for the purpose abovementioned, the yeas and nays being required by Mr. Brown,

New-Hampshire,	Mr. Gilman,	ay	ay
	Mr. Wingate,	ay	
Massachusetts,	Mr. Dana,	ay	ay
	Mr. Otis,	ay	
Rhode-Island,	Mr. Arnold,	ay	ay
	Mr. Hazard,	ay	
Connecticut,	Mr. Huntington,	ay	
New-York,	Mr. L. Hommedieu,	ay	ay
	Mr. Yates,	ay	
New-Jersey,	Mr. Clarke,	ay	ay
	Mr. Elmer,	ay	
	Mr. Dayton,	ay	
Pennsylvania,	Mr. Bingham,	ay	ay
	Mr. Reid,	ay	
Maryland,	Mr. Contee,	ay	
Virginia,	Mr. Griffin,	no	no
	Mr. Carrington,	no	
	Mr. Brown,	no	
North-Carolina,	Mr. Williamson,	ay	ay
	Mr. Swann,	ay	
South-Carolina,	Mr. Huger,	ay	ay
	Mr. Parker,	ay	
	Mr. Tucker,		
Georgia,	Mr. Few,	ay	ay
	Mr. Baldwin,	ay	

So it passed in the affirmative, and the first motion being postponed, and the second taken into consideration and amended, on the

question to agree to the motion as amended the yeas and nays being required by Mr. Yates.

New-Hampshire,	Mr. Gilman,	ay	ay
	Mr. Wingate,	ay	
Massachusetts,	Mr. Dana,	ay	ay
	Mr. Otis,	ay	
Rhode-Island,	Mr. Arnold,	ay	
Connecticut,	Mr. Huntington,	ay	
New-York,	Mr. L'Hommedieu,	ay	dd
	Mr. Yeats,	no	
New-Jersey,	Mr. Clarke,	ay	ay
	Mr. Elmer,	ay	
	Mr. Dayton,	ay	
Pennsylvania,	Mr. Bingham,	ay	ay
	Mr. Reid,	ay	
Maryland,	Mr. Contee,	ay	
Virginia,	Mr. Griffin,	ay	ay
	Mr. Carrington,	ay	
North-Carolina,	Mr. Williamson,	ay	ay
	Mr. Swann,	ay	
South-Carolina,	Mr. Huger,	ay	ay
	Mr. Parker,	ay	
	Mr. Tucker,	ay	
Georgia,	Mr. Few,	ay	ay
	Mr. Baldwin,	ay	

So it passed in the affirmative as follows:

Whereas application has been lately made to congress by the legislature of Virginia, and the district of Kentucky, for the admission of the said district into the federal union as a separate member thereof, on the terms contained in the acts of the said legislature, & in the resolutions of the said district relative to the premises. And whereas congress having fully considered the subject did on the third day of June last, resolve that it is expedient that the said district be erected into a sovereign and independent state, and a separate member of the federal union, and appointed a committee to report an

act accordingly, which committee on the second instant was discharged, it appearing that nine states had adopted the constitution of the United States lately submitted to conventions of the people:

And whereas a new confederacy is formed among the ratifying states, and there is reason to believe that the state of Virginia including the said district did on the 25th of June last become a member of the said confederacy; and whereas an act of congress in the present state of the government of the country, severing a part of the said state from the other parts thereof, and admitting it into the confederacy formed by the articles of confederation and perpetual union, as an independent member thereof, may be attended with many inconveniencies while it can have no effect to make the said district a separate member of the federal union formed by the adoption of the said constitution, and therefore it must be manifestly improper for congress assembled under the said articles of confederation to adopt any other measures relative to the premises than those which express their sense that the said district ought to be an independent member of the union, as soon as circumstances shall permit proper measures to be adopted for that purpose:

Resolved, That a copy of the proceedings of congress relative to the independency of the district of Kentucky, be transmitted to the legislature of Virginia, and also to Samuel M'Dowell, esq. late president of the said convention, and that the said legislature and the inhabitants of the district aforesaid be informed, that as the constitution of the United States is now ratified, congress think it unadvisable to adopt any further measures for admitting the district of Kentucky into the federal union as an independent member thereof under the articles of confederation and perpetual union; but that congress thinking it expedient that the said district be made a separate state and member of the union, as soon after proceedings shall commence under the said constitution as circumstances shall permit, recommend it to the said legislature and to the inhabitants of the said district, so to alter their acts and resolutions relative to the premises, as to render them conformable to the provisions made in the said constitution, to the end that no impediment may be in the way of the speedy accomplishment of this important business.

CHARLES THOMPSON, Sect.

Extracts from the Journals of a Convention held at Danville, the twenty eighth day of July, 1788, taken from the Kentucky Gazette of September 6th, 1788.

Whereas it appears to the members of this convention, that the United States in congress assembled, have for the present declined to ratify the compact entered into between the legislature of Virginia and the people of this district respecting the erection of the district into an independent state: in consequence of which the powers vested in this convention are dissolved, & whatever order or resolution they pass cannot be considered as having any legal force or obligation, but being anxious for the safety and prosperity of ourselves and constituents, do earnestly recommend to the good people inhabiting the several counties within the district each to elect five representatives on the times of holding their courts in the month of October next, to meet at Danville on the first Monday in November following, to continue in office until the first day of January, 1790, and that they delegate to their said representatives full powers to take such measures for obtaining admission of the district as a separate and independent member of the United States of America, and the navigation of the river Mississippi, as may appear most conducive to those important purposes: and also to form a constitution of government for the district, and organize the same when they shall judge it necessary, or to do & accomplish whatever, on a consideration of the state of the district, may in their opinion promote its interests.

Resolved, That the elections directed by the preceding resolution be held at the court house of each county, and continued from day to day for five days including the first day.

Resolved, That the sheriffs within the respective counties of this district be requested to hold the said elections and make return thereof to the clerk of the supreme court immediately after the same are finished, and also deliver to each representative so elected a certificate of his election, and in case there shall be no sheriff in either of the said counties, or he should refuse to act, that any two acting magistrates then present may superintend & conduct said elections and make returns and grant certificates in the same manner the sheriffs are requested to do.

Resolved, That every free male inhabitant of each county within the said district has a right to vote at the said elections within their respective counties.

Resolved, That a majority of the members so elected be a quorum to proceed to business.

Resolved, That if the said convention should not make a house on the said first Monday in November, any three or more members then assembled may adjourn from day to day for five days next ensuing, and if a convention should not then be formed at the end of the fifth day, that they may then adjourn to any day they think proper not exceeding one month.

Resolved, That the sheriffs of each county, or the said magistrates, as the case may be, read, or cause to be read the aforesaid resolutions on each day immediately preceding the opening the said elections.

Ordered, That the president do request the printer of the Kentucky Gazette to publish the proceedings and resolves of congress by him laid before this convention, also such of the proceedings of this convention as the president shall think proper, and in particular that the printer continue to publish weekly until the first of October next the recommendation for electing another convention and the several resolutions relative thereto.

A true copy,

THOMAS TODD, C. C.

No. XVI.

Extracts from the Journals of Congress.

Monday, September 1st, 1788.

Resolved, That the secretary at war be, and he is hereby directed to have a sufficient number of troops in the service of the United States in readiness to march from the Ohio to the protection of the Cherokees, whenever congress shall direct the same; and that he take measures for obtaining information of the best routes for troops to march from the Ohio to Chota, and for dispersing among all the white inhabitants settled upon or in the vicinity of the hunting grounds secured to the Cherokees by the treaty concluded between them and the United States, November 28th, 1785, the proclamation of congress of this date.

Resolved, That copies of the said proclamation, and of these resolutions, be transmitted to the executive of Virginia and North

Carolina, and that the said states be and they are hereby requested to use their influence that the said proclamation may have its intended effect to restore peace and harmony between the citizens of the United States and the Cherokees, and to prevent any further invasions of their respective rights and possessions; and in case congress shall find it necessary to order troops to the Cherokee towns to enforce a due observance of the said treaty, that the said states be, and they are hereby requested to co-operate with the said troops for enforcing such observance of that treaty.

No. XVII.

Extract of a letter from John Marshall, Esq. to Brigadier General James Wilkinson, dated Richmond, January 1st, 1787.

"It is with a great deal of mortification I tell you that I have failed in obtaining the passport I applied for. On my mentioning the subject to the governor, he said he was acquainted with you, and would with great pleasure do any thing which was proper to serve you. He took time to consider the subject, and after several applications, told me today, that to grant the passport as an official act was entirely improper, because it could only extend to the limits of Virginia, to which you had a right to go without his permit; and that he could not write a private letter of recommendation to the governor without having some acquaintance with him.

"On these reasons sir, my application in your favor was rejected. I am much chagrined at my disappointment—I am much indebted to you for the clear and succinct account you have given me of the two expeditions against the Indians.—[I fear with you, that so long as you remain connected with Virginia, it will be absolutely impossible to act on any great occasion with reputation or success. Just information from such a distance will never be obtained by government without a solicitude about intelligence, which seldom exists in a proper degree, on the eve of a separation. You are considered as beings certainly about to part with us, and therefore less attention will be given to any regulations respecting your country, than if the disunion was not expected."]

Extract from Mr. Nicholas's speech in the Convention of Virginia, June, 1788, p. 148.

I think Kentucky can expect succour and support alone from a strong efficient government, which can command the resources of the union when necessary.

She can receive no support from the old confederation—consider the present state of that country. *Declared independent of Virginia,* to whom is she to look up for succour? No sister state can help her. She may call on the present general government, but whatever may be the wish of congress, they can give them no relief.

No. XVIII.

From the Palladium of August 7th, 1806.

A CERTIFICATE.

Having observed in the Western World, a publication in which Mr. John Brown is charged with having been engaged in a treasonable conspiracy, to transfer and subject this country to the dominion of Spain; and having seen with surprise that a letter written to me in 1788, by Mr. Brown, is referred to as containing the evidence of his guilt; I do in justice to Mr. Brown hereby declare that I never received from him any communication, either written or verbal, which could authorize or justify the statement contained in that publication.

In the year 1788, when the application of the people of Kentucky to be admitted into the union as an independent state, was depending before congress, Mr. Brown was a member of that body; and was as I have reason to believe, very anxious that Kentucky should be received into the union as a state, and used his best exertions to effect that object.

After that application had been laid over for the consideration of the new government, Mr. Brown wrote me a letter informing me of the fate of the application, and stating the reasons in his opinion of the failure.

In that letter was enclosed a paper containing a statement in the

hand writing of Mr. Brown, of which the following is the substance, and to the best of my recollection the very words made use of, viz:

"In a conversation I had with Mr. Gardoque, the Spanish minister, relative to the navigation of the Mississippi, he stated that if the people of Kentucky would erect themselves into an independent state, and appoint a proper person to negociate with him, he had authority for that purpose, and would enter into an arrangement with them for the exportation of their produce to New-Orleans on terms of mutual advantage."

That paper contained the above statement of Gardoque's remarks only, for Mr. Brown subjoined no observations expressive either of his approbation or disapprobation, which induced me to conclude that it had been forwarded merely for information. Mr. Brown never intimated to me, either at that time or any other, that Mr. Gardoque had ever on any pretence, made him any propositions tending to his personal aggrandizement, as has been erroneously suggested in the Western World. And as to the alledged project of subjecting Kentucky to the government of Spain, and of raising an army to maintain a revolt against the United States; I do declare that nothing of the kind was ever suggested to me by Mr. Brown, nor to the best of my recollection did I ever hear that such ideas were at any time advanced or advocated by him or any other person in the western country; until I saw the charges published in the Western World.

I regret very much that it is not in my power at present to find the letter and paper above mentioned, I fear they are lost or destroyed.

About ten years ago I removed to Jessamine, from Mercer county, and left my son Joseph in possession of my house, in which I left a large bundle of old letters and papers.

Three or four years after my removal, my son informed me that all the old letters and papers I had left behind were destroyed; and as I cannot find the letter and paper referred to among the papers now in my possession, I suspect they were among those left in Mercer county.

SAMUEL M'DOWELL.

August 4, 1806.

No. XIX.

The following proceedings are copied from the Kentucky Gazette of Jan. 30th, and Feb. 5th, 1789.

Proceedings of a convention begun and held for the district of Kentucky, at the court house in Danville, in the county of Mercer, on Monday the third day of November, in the year of our Lord one thousand seven hundred and eighty eight. On which day (being the day appointed by a resolution of the convention held for the said district on the 31st day of July last) several members appeared and took their seats; but the number not being sufficient to proceed to business,

The convention then adjourned till to-morrow twelve o'clock.

TUESDAY the 4th day of November, 1788.

The convention met according to adjournment.

A majority of the members appeared and took their seats.

The Honorable Samuel M'Dowell was unanimously elected President.

Ordered, That Mr. Thomas Todd, be appointed clerk to this convention.

Ordered, That a committee of privileges and elections be appointed.

And a committee was appointed of Mr. Greenup, Mr. Morrison, Mr. Muter, Mr. Logan, Mr. Taylor, Mr. Smith and Mr. Irvine; who are to examine the certificates of election from the different counties in this district and make report thereon.

Ordered, That the rules and regulations of the last convention, be the rules and regulations for the government of this convention.

Resolved, that this convention will to-morrow resolve itself into a committee of the whole convention to take into consideration the present state of the district.

Sundry papers and resolutions of the congress of the United States, addressed to Samuel M'Dowell, esq. late president of the convention in Kentucky were read and ordered to lie on the clerk's table.

The convention then adjourned till to-morrow twelve o'clock.

WEDNESDAY, 5th day of November, 1788.

THE Convention met according to adjournment.

Several other members appeared and took their seats.

Ordered, That the papers and resolutions of congress, the resolves of the convention, passed on the 22d. day of September, 1787, relative to a separation of this district from the state of Virginia, together with the address from the convention to congress; be referred to a committee of the whole convention.

Resolved, That this convention do now resolve itself into a committee of the whole convention on the state of the district.

Mr. Wilkinson was elected to the chair.

After some time spent therein, Mr. President resumed the chair, and the chairman reported that the committee had taken into consideration the matters to them referred; but not having time to go through the same, desire leave to sit again to-day, which was granted.

Ordered, That the resolution of the convention of the 31st of July, 1788, recommending the election of, and giving powers to, this convention, be referred to the committee of the whole which is to sit to-day.

Resolved, That this convention do now again resolve itself into a committee of the whole, on the matters to them referred.

Mr. Wilkinson again in the chair.

After some time spent therein, Mr. President resumed the chair, and the chairman reported that the committee had taken into consideration the matters to them referred, and had come to a resolution thereof, which he read in his place, and delivered in at the clerk's table, where it was again read and ordered to lie on the table.

Ordered, That it be a standing rule of this convention, that the convention do resolve itself into a committee of the whole from day to day, to take into consideration the state of the district.

Two petitions, one from the county of Mercer, and the other from the county of Madison, praying that a spirited and manly address be sent to congress, to obtain the navigation of the river Mississippi, were read, and ordered to be referred to a committee of the whole convention.

Resolved, That this convention do now again resolve itself into a committee of the whole, to take into consideration the matters to them referred.

Mr. Wilkinson again in the chair.

After some time spent therein, Mr. President resumed the chair, and the chairman reported, that the committee had taken into consideration the matters to them referred, and had come to a resolution thereon, which he read in his place, and delivered the same in at clerk's table, where it was again read.

Ordered, That the said resolution do lie on the table.

Ordered, That the resolution for preparing an address to the assembly of Virginia be now taken up and read, and the same being read, was amended and agreed to, as follows, viz:

Resolved, That a committee be appointed to draw up a decent and respectful address to the assembly of Virginia, for obtaining the independence of the district of Kentucky, agreeable to the late resolution and recommendation of Congress, and that they prepare and report the same to the convention to-morrow.

And a committee was appointed of Mr. Edwards, Mr. Marshall, Mr. Muter, Mr. Jouett, Mr. Allen, and Mr. Wilkinson.

The convention then adjourned till to-morrow, twelve o'clock.

THURSDAY, the 6th day of November, 1788:

THE Convention met according to adjournment.

Ordered, That the resolution reported yesterday, from the committee of the whole, upon the petitions from the counties of Madison and Mercer, be now taken up and read: and the same being read, was ordered to be recommitted to a committee of the whole convention.

Resolved, That this convention do now resolve itself into a committee of the whole, on the said resolution.

Mr. Innes was elected to the chair.

And after some time spent therein, Mr. President resumed the chair, and the chairman reported that the committee of the whole had taken into consideration the matters referred to them, and had come to a resolution thereon, which he read in his place, and then delivered the same in at the table, where it was again twice read, and agreed to, as follows, viz:

Resolved, As the opinion of this committee, that the petitions from the counties of Madison and Mercer, praying this convention to prefer an address to congress, for procuring the navigation of the river Mississippi, are reasonable, and that a decent and respectful address be prepared, requesting congress to take immediate and

effective measures for procuring the navigation of the said river, agreeable to the prayer of the said petitions.

Ordered, That a committee be appointed to prepare the said address—and a committee was appointed, of Mr. Innes, Mr. Wilkinson, Mr. Marshall, Mr. Muter, Mr. Brown, Mr. Sebastian and Mr. Morrison.

Mr. Edwards from the committee appointed to draw up an address to the assembly of Virginia, for obtaining the independence of the district of Kentucky, reported, that the committee had taken the matter into consideration, and prepared an address, which he read in his place, and then delivered the same in at the table, where it was again read, and an amendment thereto proposed.

Ordered, That the said address, together with the amendment, do lie on the table.

A motion was made by Mr. Brown, for the convention to come to the following resolution, viz:

Resolved, That it is the wish and interest of the good people of this district *to separate from the state of Virginia, and that the same, be erected into an independent member of the federal union.*

Ordered, That the said resolution do lie on the table.

The Convention then adjourned until to-morrow, 12 o'clock.

FRIDAY, the 7th day of November, 1788.

The Convention met according to adjournment.

A letter from James Speed, addressed to the president of this convention was read.

Ordered, That the same do lie on the table.

The Convention then adjourned until to-morrow, 12 o'clock.

SATURDAY, the 8th day of November, 1788.

The Convention met according to adjournment.

A motion was made by Mr. Wilkinson, for the convention to come to the following resolution, which was read and agreed to, as follows, viz:

Whereas it is the solemn duty, so is the ardent desire of this convention, to pursue such measures as may promote the interest and meet the approbation of their constituents, but the discordant opinions which at present divide the good people they represent render it doubtful whether they can adopt any plan which will em-

brace the opinions of all, or even secure the support of a majority—in this state of embarrassment, perplext with doubts, and surrounded by difficulties, in order to avoid error, and to attain truth, to remove the jealousies which have infected society, and to restore that spirit of harmony and concord, on which the prosperity of all depends; they deem it most eligible to address their constituents on the momentous occasion: Therefore,

Resolved, That a committee be appointed to draft an address to the good people of the district, setting forth the principles from which this convention act; representing to them their true situation, urging the necessity of union, concord and mutual concession, and solemnly calling upon them to furnish this convention, at their next session, with instructions in what manner to proceed, on the important subject to them submitted; and a committee was appointed, of Mr. Wilkinson, Mr. Innes, Mr. Jouett, Mr. Muter, Mr. Sebastian, Mr. Allen, and Mr. Caldwell.

Resolved, That when this convention doth adjourn, it wil adjourn till Monday morning, 7 o'clock.

Ordered, That the address to the assembly of Virginia, be now taken up and read, and the same being read, was amended, and referred to a committee of the whole.

The convention then adjourned till Monday morning, 7 o'clock.

MONDAY, the 10th day of November, 1788.

THE Convention met according to adjournment.

Mr. Wilkinson, from the committee appointed to draught an address to Congress, requesting immediate & effective measures to be taken, to obtain the navigation of the river Mississippi, reported that the committee had taken the matter into consideration, and prepared an address, which he read in his place, and delivered the same in at the table, where it was again twice read, and agreed to, as follows, viz.

To the United States, in Congress assembled.

THE people of Kentucky, represented in convention, as freemen, as citizens, and as a part of the American republic, beg leave, by this humble petition to state their rights, and call for protection in the enjoyment of them.

Fathers!—Fellow-citizens!—and Guardians of our rights!—As we address you by the endearing appellation of fathers, we rely on your paternal affection to hear us; we rely on your justice, as men and

citizens, to attend to the wrong done to men and citizens; and as a people recognized by the solemn acts of the union, we look for protection to the federal head.

When the peace had secured to America that sovereignty and independence for which she had so nobly contended, we could not retire, with our Atlantic friends, to enjoy in ease the blessings of freedom. Many of us had expended, in the struggle for our country's rights, that property which would have enabled us to possess a competence with our liberty.

On the western waters the commonwealth of Virginia possessed a fertile but uninhabited wild.

In this wilderness we sought, after having procured liberty for our posterity, to provide for their support.—Inured to hardships by a long warfare, we ventured into almost impenetrable forests, without bread or domestic cattle—we depended on the casual supplies afforded by the chase; hunger was our familiar attendant, and even our unsavoury meals were made upon the wet surface of the earth, with the cloud-deformed canopy for our covering.—Though forced to pierce the thicket, it was not in safety we trod; the wily savage thirsted for our blood, lurked in our paths, and seized the unsuspecting hunter. Whilst we lamented the loss of a friend, a brother, a father, a wife, a child became a victim to the barbarian tomahawk: instead of consolation, a new and greater misfortune deadened the sense of former afflictions. From the union we receive no support—but we impeach not their justice. Ineffectual treaties, often renewed, and as often broken by the savage nations, served only to supply them with the means of our destruction. But no human cause could control that Providence, which had destined this western country to be the seat of a civilized and happy people. The period of its accomplishment was distant, but it advanced with rapid and incredible strides. We derived strength from our falls and numbers, from our losses; the unparalleled fertility of our soil made grateful returns, far disproportioned to the slight labour which our safety would permit us to bestow. Our fields and herds afforded us not only sufficient support for ourselves, but also for the emigrants who annually double our numbers, and even a surplus still remains for exportation. This surplus would be far greater, did not a narrow policy shut up our navigation, and discourage our industry.

In this situation, we call for your attention. We beg you to trace the Mississippi from the ocean—survey the innumerable rivers

which water your western territory, and pay their tribute to its greatness—examine the luxuriant soil which those rivers traverse: then we ask, can the God of wisdom and nature have created that vast country in vain? Was it for nothing that he blest it with a fertility almost incredible? Did he not provide those great streams which empty into the Mississippi, and by it communicate with the Atlantic, that other nations and climes might enjoy with us the blessings of our fruitful soil? View the country, and you will answer for yourselves. But can the presumptuous madness of man imagine a policy inconsistent with the immense designs of the Deity? Americans cannot.

As it is the natural right of the inhabitants of this country to navigate the Mississippi, so they have also the right derived from treaties and national compacts.

By the treaty of peace, concluded in the year 1763, between the crowns of Great Britain, France and Spain, the free navigation of the river Mississippi was ascertained to Great Britain: the right thus ascertained, was exercised by the subjects of that crown, till the peace of 1783, and conjointly with them by the citizens of the United States.

By the treaty, in which Great Britain acknowledged the independence of the United States, she also ceded to them the free navigation of the river Mississippi. It was a right naturally and essentially annexed to the possession of this western country. As such it was claimed by America, and it was upon that principle she obtained it: yet the court of Spain, who possess the country at the mouth of the Mississippi, have obstructed your citizens in the enjoyment of that right.

If policy is the motive which actuates political conduct, you will support us in this right, and thereby enable us to assist in the support of government. If you will be really our fathers, stretch forth your hands to save us. If you would be worthy guardians, defend our rights. We are a member that would exert any muscle for your service. Do not cut us off from your body. By every tie of consanguinity and affection, by the remembrance of the blood we have mingled in the common cause, by a regard to justice and policy, we conjure you to procure our right.

May your councils be guided by wisdom and justice, and may your determinations be marked by decision and effect. Let not your beneficence be circumscribed by the mountains which divide us; but

let us feel that you are really the guardians and asserters of our rights: then you will secure the prayers of a people, whose gratitude would be as warm as the vindication of their rights will be eternal; then our connection shall be perpetuated to the latest times, a monument of your justice, and a terror to your enemies.

Resolved, That the President of this Convention inclose the said address to the President of Congress, requesting him to lay the same before that august body.

Mr. Wilkinson, from the committee appointed to draught an address to the people of this district, reported that the committee had taken the matter into consideration, and prepared an address, which he read in his place, and then delivered in the same at the clerk's table, where it was again read, and ordered to be referred to a committee of the whole convention.

The Convention, according to the order of the day, resolved itself into a committee of the whole, to take into consideration the state of the district.

Mr. Innes was elected to the chair.

After some time spent therein, the President resumed the chair, and the chairman reported that the committee had taken into consideration the address to the Assembly of Virginia, and made an amendment thereto, which he read in his place, and then delivered in the same at the clerk's table, where it was again twice read, and again amended, and then agreed to *nemine contradicente*, as follows, viz.

To the Honourable the General Assembly for the Commonwealth of Virginia.

GENTLEMEN,

THE representatives of the good people inhabiting the several counties composing the district of Kentucky, in convention met, beg leave again to address you on the great and important subject of their separation from the parent state, and being made a member of the federal union.

To repeat the causes which impel the inhabitants of this district to continue their application for a separation, will, in our opinion, be unnecessary. They have been generously acknowledged and patronized in former Assemblies, and met the approbation of that august body,

whose consent was necessary towards the final completion of this desirable object, and who resolved that the measure was expedient and necessary, but which from their peculiar situation, they were inadequate to decide on.

As happiness was the object which first dictated the application for a separation, so it has continued to be the ruling principle in directing the good people of Kentucky to that great end, upon constitutional terms, and they conceive the longer that measure is delayed, the more will they lie exposed to the merciless savage, or (which is greatly to be feared) anarchy, with all the concomitant evils attendant thereon.

Being fully impressed with these ideas, and justified by frequent examples, we conceive it our duty as freemen, from the regard we owe to our constituents, and being encouraged by the resolutions of Congress, again to apply to your honourable body, praying that an act may pass at the present session, for enabling the good people of the Kentucky district, to obtain an independent government and be admitted into the confederation, as a member of the federal union, upon such terms and conditions as to you may appear just and equitable; and that you transmit such act to the president of this convention with all convenient dispatch, in order for our consideration and the final completion of this business.—This we are emboldened to ask, as many of the causes which produced former restrictions, do not now exist.—Finally, relying on the justice and liberality of your honourable house, so often experienced, and which we are even bound to acknowledge, we again solicit the friendly interposition of the parent state, with the congress of U. States for a speedy admission of the district into the federal union, and also to urge that honourable body, in the most express terms, to take effectual measures for procuring to the inhabitants of this district the free navigation of the river Mississippi, without which the situation of a large part of the community will be wretched and miserable, and may be the source of future evils.

Ordered, That the president sign and the clerk attest the said address, and that the same be enclosed by the president to the speaker of the house of delegates.

Resolved, That this convention highly approve the address presented by General James Wilkinson to the Governor Intendant of Louisiana, and that the President be requested to present him the

thanks of the convention for the regard which he therein manifested for the interest of the western country.

Resolved, That when this convention doth adjourn, it will adjourn to the first Monday in August next.

Resolved, That the President of this convention shall, during the recess thereof, with the advice of three, or the request of five members, call a convention, and in case of death, removal, or other disability of the president, any six members shall have power to call a meeting of the said convention.

Ordered, That the printer of the Kentucky Gazette be requested to publish the proceedings of this convention.

The Convention then adjourned till the first Monday in August next.

A true copy,

THOMAS TODD, C. C.

No. XX.

An Act concerning the erection of the District of Kentucky into an independent State.

Passed the 29th of December, 1788.

PART of the second condition—"And domestic debt of this commonwealth."

Part of the sixth condition—"Saving and reserving to the officers and soldiers of the Virginia lines, on state and continental establishment, their representatives and assignees, their rights to lands under the several donations of this commonwealth, who shall not be restrained or limited as to time in making their *respective locations*, or compleating their surveys by any thing in this act contained, nor by any act of the proposed state, without the future consent of the legislature of Virginia."—These two clauses are in addition to the conditions heretofore offered by Virginia to Kentucky as the basis of her separation.

Extracts from the Journals of a Convention, begun and held for the District of Kentucky, at the courthouse in Danville, in the county of Mercer, on Monday, the 20th day of July, in the year of our Lord, 1789, which day was appointed by law for the meeting of the Convention.

Copied from the Kentucky Gazette of August 29th, and September 5th, 1789.

THURSDAY, 23d. day of July.

WHEREAS it is the opinion of this convention, that the terms now offered by Virginia for the separation of the district of Kentucky from said state, are materially altered from those formerly offered and agreed to on both sides; and that the said alteration of the terms is injurious to and inadmissible by the people of this district.

Resolved therefore, That a memorial be presented to the ensuing General Assembly of the state of Virginia, requiring such alterations in the terms at present proposed to this district for a separation, as will make them equal to those formerly offered by Virginia, and agreed to on the part of the said district of Kentucky.

FRIDAY, the 24th day of July.

Mr. Muter, from the committee appointed to draw up a memorial to the assembly of Virginia, for obtaining alterations in the terms last proposed by the state of Virginia—reported, that the committee had taken the matter into consideration, and prepared a memorial, which he read in his place, and then delivered in the same at the clerk's table, where it was again twice read, and ordered to be committed to a committee of the whole convention.

Resolved, That this convention do now resolve itself into a committee of the whole, on the said memorial.

Mr. Crockett was elected to the chair.

After some time spent therein, the President resumed the chair, and the chairman reported, that the committee had taken the said memorial into consideration, and made several amendments thereto, and the memorial, as amended, he read in his place, & then delivered in the same at the clerk's table, where it was again twice read, and agreed to.

Resolved, That Mr. Muter, Mr. Campbell, Mr. Logan, Mr. Thomas Kennedy, Mr. Wm. Kennedy, Mr. Marshall, Mr. Leitch,

Mr. Irvine, Mr. Machir, Mr. Edwards, Mr. Slaughter, Mr. Lee, Mr. Shelby, Mr. Smith, Mr. Grundy, Mr. Trotter, the President of this Convention, and any four of them, be appointed a committee to draw up and transmit to the executive a remonstrance on the subject of discharging the scouts and rangers in the different counties of this district, and also state to his excellency the President of Congress, the defenceless state of our frontiers, the most probable mode of defence, the depredations committed by the Indians in this district, since the first day of May last, the small number and dispersed situation of the continental troops, which renders it impossible they can either assist us, or intercept an enemy; and report to the next session of this convention copies of their proceedings and letters, and the answers they may receive in consequence thereof.

Copy of a letter from the Governor of Virginia to the County-Lieutenant of this District.

RICHMOND, JUNE 1st, 1789.

SIR,

THE inclosed copy of a letter from the President of the United States, rendering it unnecessary that this state should any longer, at her own particular charge, support the troops called into service for the defence of the western frontier; you will immediately discharge all the scouts and rangers employed in your county. In cases of any future incursions of the Indians, you will give as early information of them as possible to the officer commanding the continental post on the Ohio, nearest the point of attack. I have communicated to the President the instructions now sent you, and have no doubt but effective measures will be taken to protect all the inhabitants of the frontiers.

You will, if possible, furnish me before the meeting of the next Assembly, with a statement of the whole expense incurred this year, for the pay and support of the scouts and rangers engaged in the defence of your county.

I am, Sir,
Your Obedient Servant,

BEVERLY RANDOLPH.

No. XXI.

An act concerning the erection of the district of Kentucky into an independent state, passed the 18th of December 1789.

WHEREAS it is represented to this present general assembly, that the act of last session, entitled "an act concerning the erection of the district of Kentucky into an independent state," which contains terms materially different from those of the act of the October session 1785, are found incompatible with the real views of this commonwealth, as well as injurious to the good people of the said district.

"Second condition—that the proposed state shall take upon itself a just proportion of the debt of the United States, & the payment of all the certificates granted on account of the several expeditions carried on from the *Kentucky* district against the Indians, since the first day of *January*, 1785.

"Sixth condition—that the unlocated lands within the said district, which stand appropriated to individuals or description of individuals, by the laws of this commonwealth, for military or other services, shall be exempt from the disposition of the proposed state, and shall remain subject to be disposed of by the commonwealth of Virginia, according to such appropriation, until the first day of *May*, 1792, and no longer; thereafter the residue of all lands remaining within the limits of the said district, shall be subject to the disposition of the proposed state."

Extracts from the Journals of a Convention held at Danville, the twenty sixth day of July, 1790.

WEDNESDAY, July 1790.

RESOLVED, That it is expedient for, and the will of the good people of the district of Kentucky, that the same be erected into an independent state, on the terms and conditions specified in an act of the Virginia assembly, passed the 18th. day of December, 1789, entitled, "an act concerning the erection of the district of Kentucky into an independent state."

To the President and the Honourable the Congressmen of the United States of America.

The Memorial of the representatives of the people of Kentucky in convention assembled, pursuant to an act of the legislature of

Virginia, passed the 18th. day of December, 1789, entitled "an act concerning the erection of the district of Kentucky into an independent state."

Humbly sheweth that the inhabitants of this country are as warmly devoted to the American union, and as firmly attached to the present happy establishment of the federal government, as any of the citizens of the United States.

That, emigrating from thence, they have with great hazard and difficulty effected their present settlements.

The hope of increasing numbers could alone have supported the early adventurers under those arduous exertions; they have the satisfaction to find their hope verified. At this day the population and strength of this country render it fully able in the opinion of your memorialists to form and support an efficient domestic government.

The inconveniencies resulting from its local situation, as a part of Virginia, at first but little felt, have for some time been objects of their most serious attention; which occasioned application to the legislature of Virginia for redress. Here your memorialists would acknowledge with peculiar pleasure the benevolence of Virginia in permitting them to remove the evils arising from that source by assuming upon themselves a state of independence.

This they have thought expedient to do in the terms and conditions stipulated in the above recited act; and have fixed on the first day of June 1792, as the period when the said independence shall commence.

It now remains with the president and the congress of the United States to sanction these proceedings by an act of their honorable legislature prior to the first day of November 1791, for the purpose of receiving into the federal union the people of Kentucky, by the name of the state of Kentucky.

Should this determination of your memorialists meet the approbation of the general government, they have to call a convention to form a constitution, subsequent to the act of congress and prior to the day fixed for the independence of this country. When your memorialists reflect on the present comprehensive system of federal government; and when they also recollect the determination of a former congress on this subject, they are left without a doubt that the object of their wishes will be accomplished. And your memorialists as in duty bound shall forever pray.

MONDAY, 26th day of July, 1790.

Resolved, Therefore that in the month of December, 1791, on the respective court days of the counties within the said district, and at the respective places of holding courts therein, representatives to continue in appointment for seven months, shall be elected by the free male inhabitants of each county above the age of twenty one years, in like manner as the delegates to this present convention have been elected in the proportions following:

In the county of Jefferson shall be elected five representatives, in the county of Nelson five representatives, in the county of Mercer five representatives, in the county of Lincoln five representatives, in the county of Madison five representatives, in the county of Fayette five representatives, in the county of Woodford five representatives, in the county of Bourbon five representatives, and in the county of Mason five representatives. Provided that no person shall vote in any county except that in which he resides, and that no person shall be capable of being elected unless he has been resident within the said district at least one year. Each of the officers holding such elections shall continue the same from day to day, passing over Sunday, for five days including the first day, and shall cause this resolution to be read each day immediately preceding the opening of the election at the door of the court house or other convenient place. Either of the officers shall deliver to each duly elected a representative, a certificate of his election, and shall transmit a general return to the clerk of the supreme court, to be by him laid before the convention. For every neglect of any of the duties hereby enjoined on such officers he shall forfeit one hundred pounds to be recovered by action of debt by any person suing for the same. The said convention shall be held at Danville, on the first Monday in April, and shall and may proceed after choosing a president and other proper officers, and settling the proper rules of proceeding, to frame and establish a constitution or form of government, and also to declare what laws shall remain in force until altered or abrogated by legislative authority acting under the constitution so to be framed and established. Provided, however that five members assembled shall be a sufficient number to adjourn from day to day, and issue writs for supplying vacancies which may happen from deaths, resignations or refusals to act. Provided, also, that in case of absence, death, resignation or refusal to act of any of the officers appointed by

this resolution, to hold the said elections, any magistrate who shall chuse to act in any county where such absence, death, resignation or refusal to act shall happen may proceed to hold such election under the same rules as such officer should or might have held it.

No. XXII.

Copy of a letter from his Excellency the Governor of Virginia, to the different county Lieutenants in the District of Kentucky.

RICHMOND, March 10th, 1790.

SIR,

The governor of the continental western territory has given the executive information of incursions having been made by parties from this state upon the tribes of Indians in amity with the United States.

As conduct like this is highly dishonorable to our national character, and will inevitably draw upon individual delinquents the punishment due to such offences, it becomes our duty to enjoin you to exert your authority to prevent any attempts of this kind in future. Should it be necessary, on any occasion, to order out parties to repel an attack of an enemy within the limits of the state, you will issue the most positive orders that no such party shall, under any pretence whatever enter either into the territory of the United States or of any Indian tribe.

I am sir,

Your most obt. servt.

BEVERLY RANDOLPH.

No. XXIII.

Extracts of a letter from the Secretary of War.

War Office, April 13th, 1790.

SIR,

By some recent information from the Ohio it appears that the Indians still continue their depredations on the frontiers.

The president of the United States is exceedingly desirous that the inhabitants of the frontier counties should experience the benefits

of the provision contained in the said orders to the commanding officer, he has directed me to make this communication to you, &c.

And he has further directed me to empower you that in case any of the counties of Kentucky should not already have availed themselves of said provision, and should in your judgment stand in need thereof, that you should under your hand and seal authorise the lieutenants of such counties to call forth the scouts precisely as to the numbers, and under the regulations directed in the instructions to the governor of the western territory, or in his absence the commanding officer of the troops.

I have the honor to be, Sir,
Your most obt. hum. servt.,

H. KNOX,
Secretary of War.

HARRY INNES, Esq.
District Judge of
Kentucky.

Extracts of a letter from Judge Innes, dated Danville, Kentucky, July 7th, 1790.

I have been intimately acquainted with this district from November, 1783, I can with truth say that in this period of time the Indians have always been the aggressors, that any incursions made into their country have been from reiterated injuries committed by them—that the depredatory mode of war and plundering carried on by savages it is rendered difficult and almost impossible to discriminate what tribes are the offenders, that since my first visit to this district, which was the time above named, I can venture to say that 1500 souls have been killed and taken in the district and migrating to it; that upwards of 20,000 horses have been taken and carried off, and other property such as money, merchandize, household goods and wearing apparel have been carried off and destroyed by those barbarians, to at least 15,000 L.

I am with great respect, sir,
Your most obt. servt.,

HARRY INNES.

MAJ. GEN. KNOX.
Secretary of War.

No. XXIV.

At a meeting of sundry inhabitants of the counties of Nelson, Mercer, Lincoln, Fayette and Jefferson, at Danville on the 2d day of July 1790, Benjamin Sebastian, Esq. appointed chairman, and Christopher Greenup, clerk.

Resolved, as the opinion of this meeting that from the frequent depredations of the Indians on the people and property of this district, a meeting of the several field officers within the same, is highly advisable.

And therefore it is requested that the said officers give their attendance at Danville on Monday the twenty sixth inst. to consider of the best mode of defence for the inhabitants of this district.

Resolved, that the above resolution be transmitted to the printer of the Kentucky Gazette, and to request him to insert the same.

A copy.

CHRISTO. GREENUP, clk.

No. XXV.

An act declaring the consent of Congress, that a new state be formed within the jurisdiction of the commonwealth of Virginia and admitted into this union by the name of the state of Kentucky, passed and approved February the fourth, 1791.

Be it further enacted and declared, that upon the aforesaid first day of June, one thousand seven hundred and ninety two, the said new state by the name and style of the state of Kentucky, shall be received and admitted into this union, as a new and entire member of the United States of America.

No. XXVI.

An act for the admission of the state of Vermont into this union.

The state of Vermont, having petitioned the congress to be admitted as a member of the United States, Be it enacted by the Senate and House of Representatives of the United States of America, in congress assembled, and it is hereby enacted and declared, that on the fourth day of March, one

thousand, seven hundred and ninety one, the said state by the name and style of "the state of Vermont" shall be received and admitted into this union as a new and entire member of the United States of America.—I Vol. L. U. S. p. 281.

No. XXVII.

Whereas the president of the United States by instructions bearing date the 9th. day of March, 1791, hath authorized Charles Scott, John Brown, Harry Innes, Benjamin Logan and Isaac Shelby, or a majority of them call into service a corps of volunteers from the district of Kentucky to march on an expedition against the Indians north west of the Ohio, and to be commanded by Brigadier General Charles Scott.

Pursuant to the power and authority aforesaid the board met at Danville on the 8th. day of April.

Present. Charles Scott, John Brown, Harry Innes, Benjamin Logan and Isaac Shelby.

The board having taken into consideration the business to them referred, came to the following resolutions, viz:

Resolved, that the plan of the proposed expedition be communicated to the people inhabiting the district of Kentucky, and that it be earnestly recommended to the officers of militia and other influential characters in the several counties to engage and enlist such number of volunteers as may be necessary to serve on the said expedition, and to make report of their success to the board at the next meeting.

Resolved, that a meeting of the board be held at this place on the second day of May next in order to receive returns of the men recruited for the said service, and to make final arrangements for putting the said expedition in motion.

The board having taken into consideration the exposed situation of the frontiers of the district, and the necessity of establishing guards for the protection of the defenceless inhabitants.

Resolved, That pursuant to the authority for that purpose in us vested by the president of the United States by letter bearing date the 10th day of March, Brigadier General Scott be empowered and required to call into service any number of the militia of the several counties within the district not exceeding 326 privates as he may think necessary, for a term not exceeding 60 days, and to station

them on the frontiers in such manner as he may think most conducive to the public safety, paying due regards in calling out the said militia to the apportionment heretofore observed in the several counties, and in providing for their support to confine himself to the instructions received from the secretary of war.

The board then adjourned to meet again at this place on the 2d day of May.

CHAS. SCOTT,
HARRY INNES,
BENJAMIN LOGAN,
ISAAC SHELBY.

Extract of a commission from Arthur St. Clair, commander in chief of the American army, to Brigadier General Charles Scott, the Hon. Henry Innes, the Honbl. John Brown, Benjamin Logan, and Isaac Shelby, Esquires.

Whereas the president of the United States did further authorise a second and third expedition of the same nature, provided the Major General or commanding officer of the troops upon the Ohio should judge the public interest should require the measure, and direct the same under his hand and seal; and the said expedition having been carried into effect, and now judging that a second expedition of a like nature with the former would be highly conducive to the public interest, I, Arthur St. Clair, Major General commanding the troops of the United States upon the Ohio, do hereby direct that another expedition be set on foot in the district of Kentucky, and carried into execution upon the same principles and stipulations, and under the same regulations and restrictions as that lately commanded by Brigadier General Scott, excepting only that the number of men to be employed on the said expedition do not exceed the number of five hundred, officers included; that they rendezvous at Fort Washington on the 15th day of next month or as soon afterwards and not exceeding the 20th, as possible, and that their operations be directed against the town of Kekiah on the Ouabashe and any other towns of the hostile Indians to which their force may be adequate.

In witness whereof I have hereunto set my hand and seal at Fort Washington, June the 25th, 1791.

A. ST. CLAIR. (Seal).

No. XXVIII.

Extract from the Constitution of Virginia.

The western and northern extent of Virginia shall in all other respects stand as fixed by the charter of King James the first, in the year one thousand six hundred and nine, and by the public treaty of peace between the Courts of Britain and France in the year one thousand seven hundred and sixty three, unless by act of this legislature, one or more governments be established westward of the Allegany mountains. And no purchases of lands shall be made of the Indian nations but on behalf of the public, by authority of the general assembly.

No. XXIX.

Extract from a paper stiled The Western World, published at Frankfort, (K.) July 12th, 1806—No. 2.

"After General Washington was acquainted by Col. Marshall with the several particulars of the proposal made by Gardoque and Colonel Conolly, and the names of their partizans in Kentucky, he caused Doctor Stewart of Alexandria, the son-in-law of Mrs. Washington, to address a letter to the speaker of the House of Representatives on the subject.

"General Washington being convinced from the information of Col. Marshall, of the existence of a Spanish association in Kentucky, and of the strength of the party."

No. XXX.

Extract of a letter from the Secretary of War, to Judge Innes.

War Department, July 29th, 1790.

I have the honor to thank you, Sir, in the name of the president of the United States for the prompt manner in which you executed his wishes on the former occasion.

The arrangement you made will continue until the one now enclosed shall be brought into operation.

I have the honor to be, sir,
Your most obt., humb. servt.,

H. KNOX,
Secretary of War.

The Honorable
JUDGE INNES.

No. XXXI.

Extracts of two letters from the Secretary of War.

War Department, 3d of August, 1791.

GENTLEMEN,

YOUR letter of the 28th of June last, by Lieutenant Belli, was received at this office on the 26th of July, and was immediately, with Brigadier General Scott's dispatches, submitted to the President of the United States, &c.

I am commanded by the President of the U. States to express to you his thanks for your services in arranging and preparing the expeditions; and his hopes that you will derive equal satisfaction, from the issue of the second, as you must have received from the success of the first.

I have the honor to be,
With great respect, Gentlemen,
Your most obedt. & humble servt.,

H. KNOX,
Secretary of War.

HARRY INNES,
JOHN BROWN,
BENJAMIN LOGAN,
ISAAC SHELBY,
Esquires.

War Department, September 29th, 1791.

Gentlemen,

I HAVE the honor to acknowledge the receipt of your favor of the 30th ultimo, informing of the success of Brigadier General Wilkinson's expedition, &c.

The President of the United States, gentlemen, is impressed with a high sense of the services you have rendered on the occasion and he has commanded me to transmit you his thanks for the same,

and to express his hope that you and the district of Kentucky may in consequence of the operations of the campaign, enjoy entire tranquillity.

I have the honor to be,
With the highest respect, gentlemen,
Your most obedt. humble servt.,

H. KNOX,
Secretary of War.

MESSRS. CHARLES SCOTT,
HARRY INNES AND
JOHN BROWN.

No. XXXII.

In The House of Delegates.

Wednesday, the 29th of November, 1786.

RESOLVED unanimously, That a copy of the memorial of sundry inhabitants of the western country, be transmitted to the delegates representing this state in Congress.

Resolved unanimously, That the common right of navigating the Mississippi and of communicating with other nations through that channel, be considered as the bountiful gift of nature to the United States, as proprietors of the territory watered by the said river and its eastern branches.

Resolved unanimously, That the confederacy having been formed on the broad basis of equal rights in every part thereof, to the protection and guardianship of the whole, a sacrifice of the rights of any one part to the supposed or real interest of another part, would be a flagrant violation of justice, a direct contravention of the end for which the federal government was instituted, and an alarming innovation of the system of the Union.

Resolved therefore unanimously, That the delegates representing this state in congress be instructed in the most decided terms to oppose any attempts that may be made in congress to barter or surrender to any nation whatever, the right of the United States to the free and common use of the river Mississippi; and to protest against

the same as a dishonorable departure from that comprehensive and benevolent policy which constitutes the vital principle of the confederacy, as provoking the just resentments and reproaches of our western brethren, whose essential rights and interests would be thereby sacrificed and sold, as destroying the confidence in the wisdom, justice and liberality of the federal council which is so necessary at this crisis, to a proper enlargement of their authority, and finally as tending to undermine our repose, our prosperity and our union itself, and that the said delegates be further instructed to urge the proper negociations with Spain, for obtaining her concurrence in such regulations, touching the mutual and common use of the said river, as may secure the permanent harmony and affection of the two nations, and such as the wise and generous policy of his Catholic Majesty will perceive to be no less due to the interests of his own subjects than to the just and friendly views of the United States.

This document was not procured in time to appear in its proper place.

THE END.

A

LETTER

FROM

GEORGE NICHOLAS,

OF KENTUCKY,

TO

HIS FRIEND,

IN VIRGINIA.

Juſtifying the conduct of the Citizens of Kentucky, as to ſome of the late Meaſures of the General Government;

AND CORRECTING CERTAIN FALSE STATEMENTS,

Which have been made in the different States, of the Views and Actions of the People of Kentucky.

LEXINGTON:

PRINTED BY JOHN BRADFORD, ON MAIN STREET.

1798.

A LETTER

My Dear Sir,

* * * * * * * having shewn me that part of your letter to him, which respects our politics, and myself, I have prevailed on him to lend me the letter, that I might have it in my power to answer it. I am induced to do this, as well from a desire to remove the unjust impressions and representations which have been received by, and made to, our fellow citizens, of our views and designs; as from a wish, that by making our real sentiments public, an opportunity may be afforded, of detecting the errors on which they are founded, if they really are erroneous.

Before I enter on the subject, let me request your calm and deliberate consideration, of what I shall advance. Opinions and reasoning which are in opposition to what we think right ourselves, are often condemned and rejected too hastily; but this is not the way to remove error; full and dispassionate investigation is the only means of arriving at truth, and the real patriot can have no other object in his political enquiries.

The warmth of my own passions, the improper influence which I am conscious, that they too often have over my judgment, and the peculiar tendency which I feel, that they possess to lead the mind astray, in its attempts to form a just opinion as to our present political questions; all conspire to make me urge this request on my friend, whose good opinion I wish to preserve, whose unintentional errors I wish to see corrected, and whose well known patriotism I wish to rouse, before that period shall arrive, when a conviction of the most important truths will come too late; and when the remembrance that it was not felt earlier, will be attended with the most heart felt concern and sorrow. If after having devoted the prime of your life to the establishment of the liberty of your country; if after having shed your blood in its defence; if after seeing yourself surrounded with children and grand children, for whose sakes you have voluntarily submitted to all the ills necessarily attendant on revolutions and wars; what will be your feelings in the decline of life, if you should see that liberty destroyed?

I know you so well as to be satisfied, that nothing could add to the bitterness of such a situation, but the recollection, that you had by an improper and unlimited confidence, even undesignedly, contributed to it. Pause then my friend, and think deliberately and dispassionately, and do not let any improper conduct in a foreign nation, to which your attention is artfully turned on one side, blind you to the eminent danger which hangs over the liberties of your country, on the other. At the time you are calling out arm, arm, against the foreign foe, who you say threatens the independence of our country; do not shut your eyes to domestic violations of our constitution, and our liberties. What will it avail us, if we can preserve our independence as a nation, nay if we can even raise our country to the highest pitch of national glory, provided we at the same time lose our own liberties? If France is at this time subjected at home, to the military despotism which is said to reign there; will the conquests atchieved by her arms, and the glory which surrounds her, compensate the people of that country in the smallest degree, for their lost liberties? Can the power and consequence of tyrants, ever alleviate the miseries of their slaves? If they cannot, we ought to consider it as a truth of the most important nature—that independence abroad is of no real value, unless it is accompanied with liberty at home.

The preamble to our constitution declares, that the securing this liberty, was the great and primary consideration, which induced the people of America to form that constitution? "We the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare, *and secure the blessings of liberty to ourselves and our posterity*, do ordain and establish this constitution for the United States of America."

My feelings have forced from me these observations? I will now answer your letter.

You say "we entertain none of your fears, our liberties we think are not in danger." It is not at all surprising when we form such different opinions of our political situation, that our conduct also should be so materially different; but as the conduct of either, can be right only as far, as the opinion by which it is actuated shall prove to be just, we ought carefully to ascertain which of those opinions is founded on propriety. No country can be free, unless

it has a constitution, limiting in a sufficient degree, the powers of those who are appointed to administer the government; and also guarding those powers from abuse, as far as such a guard can be established. The most effectual guard which has yet been discovered against the abuse of power, is the division of it. It is our happiness to have a constitution which contains within it, a sufficient limitation to the power granted by it, and also a proper division of that power. But no constitution affords any real security to liberty, unless it is considered as sacred and preserved inviolate; because that security can only arise from an actual, and not from a nominal limitation and division of power. Every violation of such a constitution must be made in one of two ways; either by an assumption by the government at large, of greater powers than is given to it, by the constitution; or by one branch of the government, assuming to itself, or having transferred to it by the other branches, powers which the constitution declares shall be exercised only by the other branches, or by the whole government.

This transfer even of constitutional powers, from the whole to a part, or from the part to which they are given by the constitution, to a part to which they are not given; is as dangerous to liberty, as an assumption by the whole of the government, of more power than is given to it by the constitution: because the division of the power which is given, is as essential as its limitation, to the preservation of liberty. Before therefore, we can admit the truth of your opinion, that "our liberties are not in danger," we must be satisfied, that our government has neither assumed to itself, other or greater powers than are assigned to it by the constitution, nor violated that division of power, marked out by the constitution; by permitting any one branch of the government, to exercise powers specially confided by the constitution, either to the whole or to other parts of the government.

I will examine a number of the acts of our government by these tests. The constitution declares that "congress shall have power to raise and support armies," an act passed by congress gives the president power "in the event of a declaration of war against the United States, or of actual invasion of their territory by a foreign power, or of imminent danger of such invasion, *discovered in his opinion to exist* before the next session of congress to cause to be enlisted and to call into actual service, a number of troops not ex-

ceeding 10,000; to be enlisted for a term not exceeding three years." The same bill also enacts, "that in addition to the aforesaid number of troops; the president is hereby empowered, *at any time within three years, after the passing of this act if in his opinion the public interest shall require it,* to accept of *any company or companies* of volunteers, either of artillery, cavalry or infantry, who may associate and offer themselves for the service, who shall be armed, clothed and equipped at their own expence, and whose *commissioned officers the president is hereby authorized to appoint;* who shall be liable to be called to do military duty at any time the president shall adjudge proper, *within two years after he shall accept the same.*"

By this act the power vested by the constitution in congress "to raise armies" has been by them transferred to the president; and he is made the sole judge of the necessity of raising this army, and of the number that it shall consist of, so that the regulars do not exceed 10,000; but without any restriction as to the number of volunteers; and as the president is at liberty to accept of the volunteers, at any time within three years after the passing of the act, and as they are liable to be called on to do military duty, at any time the president shall adjudge proper, within two years *after* he shall accept of their services, it may be truly said, that he has an absolute power for five years, to raise an army to any amount he pleases, to be commanded by officers of his own appointment, and to do such services as he shall be pleased to direct. And if these corps of volunteers are to be considered as select corps of militia, in which light they appear to have been considered by the amendatory act passed on this subject which declares that after their services are accepted by the president, that they shall be exempted from militia duty in other corps; the power given to the president by the bill to appoint their commissioned officers, violates that part of the constitution, which "*reserves* to the states respectively the appointment of the militia officers." The constitution also gives power to congress "to provide and maintain a navy;" but they have authorized the president to accept by way of loan, of any number of ships that may be offered to him. The constitution has also given power to congress "to borrow money on the credit of the United States;" but they have given the president power to borrow 5,000,000 of dollars without any limitation as to the amount of the interest to be paid on the loan.

Thus, congress have by these different acts, to the degree, that I have stated, transferred the power over the purse and the sword vested in them by the constitution, to the president; and if a power over the purse and the sword, has always been properly considered as including within it all other powers; and if this power to the extent to which it hath been now given to the president, hath already as you suppose, produced forty ships of war, and 90,000 volunteers; and will also shortly procure more than 10,000 regulars, all officered by chosen spirits selected by the president himself, and dependant on him for their continuance in office; I beseech you, to inform me on what it is that you found your opinion, that "our liberties are not in danger."

So far from my being able to concur with you in this way of thinking, after the most serious reflections on the subject, I am clearly of opinion, that if the real difference between our government as fixed by our constitution, and an absolute government could be ascertained; it would be found, that those who have administered our government, have already by their different violations of the constitution, and of the republican principles on which it is founded, done away and destroyed much the greater and most powerful part, of the guards to liberty, which are contained in that constitution; and which originally constituted the essential difference between our government and a despotic government. And that if they have, in so short a time, with the means which they then had in their power, and when they were opposed by *all* the constitutional barriers, been able to effect so much, that it will not now require any great effort on their part, to remove the remaining difference between the two governments; when their means of attack are increased in a twenty-fold degree, and when the principal constitutional barriers are already laid prostrate at their feet: unless the people of America, will rally around their constitution, for its protection.

You say also "the alien law you wish to be made perpetual." My knowledge of you convinces me, that you will recall that wish, if I can satisfy you, that this law violates the constitution, by exercising a power not delegated to congress by the constitution, and by infringing an authority which prior to the constitution was vested in the state government, and which the constitution still reserved to them; that it violates the rights secured to alien friends, by the constitutions of the federal as well as of the state governments; that it is impolitic; and that it is unjust and unnecessary. You know that

this act concerns *alien friends* only, there being another special act of congress, directing what shall be done with *alien enemies;* this will render it unnecessary in the discussion of this question to take any notice, of the doctrine concerning alien enemies. To understand the constitutional powers of congress on this subject, we should recollect the state in which this business was, prior to the adoption of the constitution, and then ascertain the change which was made in it by that constitution.

Prior to the adoption of the constitution, the people inhabiting the different states might have been divided into two classes; natural born citizens, or those born within the state and aliens or such as were born out of it. The first by their birth-right became entitled to all privileges of citizens; the second were entitled to none, but such as were held out and given by the laws of the respective states, prior to their emigrating to them. I say by the laws that were in force prior to their emigrating to the state; because although each state as a sovereign and independent state, had an unquestionable right to declare, on what terms strangers should be permitted to come into the state, and what privileges they should be entitled to after they had emigrated to the state; these terms after a stranger had in consequence of their being offered to him, actually removed to the state, constituted a compact between him and the state, which could no more be changed by one party to it without the consent of the other, than any other compact can be so altered. But still the state had a right to change those terms whenever it judged it proper to do so, as to all future emigrants. The laws, then, of each state must be resorted to, to ascertain what were the privileges granted to emigrants, and upon what terms and at what time, they were entitled to those privileges.

In this state and in Virginia the privileges of alien friends depended on the constitution of each state, the acts of its legislature, and the common law; by these they were considered, according to the time of their residence, and their having complied with certain requisites pointed out by these laws, either as *denizens or naturalized* citizens. As denizens, "they were placed in a kind of middle state between aliens and natural born citizens;" by naturalization, they were put exactly in the same condition that they would have been, if they had been born within the state, except as far as was specially excepted by the laws of each state. The degree of privilege to which

each class of aliens was entitled was different, but the claim of each to the privileges annexed by law to his class, was equally well established; and the one could no more, with justice, or by law, be deprived of his inferior privileges, than the other could of his more extensive ones. And as far as these privileges did extend, they both had the same legal claim to them, that the natural born citizen had to his privileges. Like the natural born citizen, they both owed allegiance to the state, were equally liable to be punished for offences against it, and were equally entitled to the protection of the laws, to security against oppression, and to every legal means of self-justification, when attacked by the process of law.

The distinction between these two classes of aliens was not only known to, and established by law, but each class had a particular name affixed to it by law—the law denominating one of them denizens, the other naturalized citizens; and the common law had affixed such distinct and appropriate ideas to the terms denization and naturalization, that they cannot be confounded together, or mistaken for each other, in any legal transaction whatever. They were so absolutely distinct in their natures, that in England the rights they convey cannot both be given by the same power; the king can make denizens, but nothing but an act of parliament can make a naturalized subject; and altho the powers which belong to both king and parliament, under the English government, were vested in the state governments at the revolution, still they have always been considered as distinct powers, and as such exercised, by granting the different degrees of privileges, upon the different terms specified by law, as qualifications necessary to entitle each class of alien friends to the privileges annexed to that class: and the legal distinction between them and the appropriate meaning given to the name, by which each class was distinguished, continued to be recognized by the laws of the state in the same manner that it was in England; as may be fully proved by the act of the Virginia legislature "to naturalize the Marquis Fayette."

This was the legal state of this subject in Virginia when the federal constitution was adopted; it declares, that "congress shall have power to establish an uniform rule of *naturalization* throughout the United States;" but it also further declares, that "the powers not delegated by the constitution to the United States, nor prohibited by it to the states, are reserved to the state respectively, or to the people." The power of naturalization, and not that of denization

being then *delegated* to congress, and the power of denization, not being *prohibited* to the state by the constitution, that power ought not to be considered as being given to congress by the constitution, but, on the contrary, as being *reserved* to the states. As the words do not give this power, neither does it come within the reason on which the other power was given.

The constitution declares, that "the citizens of each state shall be entitled to all the privileges and immunities of citizens in the several states;" if therefore, the power of naturalization had been left in the respective states, this consequence would have followed: they might have established different rules; and a man who could not have been naturalized by the law of Virginia, might have been naturalized by the law of Maryland; and then, as a citizen of Maryland, he would have been entitled to all the privileges and immunities of a citizen of Virginia. It was, therefore, absolutely necessary to prevent this inconvenience, and the evils which would necessarily grow out of it, to vest congress with the exclusive power of naturalization; as by this means no man could be admitted as a *naturalized citizen* of one state, by any qualification different from that which would be required in any other state.

But this reason did not apply to the right of *denization*, because this did not make a citizen of an alien, but only placed him in a middle state, between the two; and because it only gave him local privileges, which he was so far from being entitled to carry with him into another state, that he actually lost them by his removal from the state giving them. And although the individual states might, for the reasons assigned, have been willing to give up to congress the power of naturalization, it would have been very dangerous and impolitic to put it in the power of a majority of the states in the Union, to prohibit emigration to the other states.

The ninth section of the first article, and the fifth article of the constitution, prove beyond contradiction, that the constitution so far from intending to give to congress any other power on this subject, but that which it does expressly give to that body, "to establish an uniform rule of naturalization," has expressly forbid such a power being given them, even by an amendment to the constitution, prior to the year 1808: and therefore must prove also that this act is unconstitutional.

But admitting for argument sake, that congress had a right to legislate on this subject, I conceive that the act which they have

passed respecting it, is unconstitutional, from the nature of the provisions contained in the act. If they had a right given them by the constitution to legislate on this subject, it could be no greater right than was before vested in the state governments: and the state laws which had been passed respecting it prior to the adoption of that constitution, were unquestionably in force until congress did legislate concerning it; and all the terms held out by those laws, were binding on the United States, as to all who had emigrated here prior to the first act of legislation by congress, respecting it. If those state laws are examined, it will be found, that every security which is given to a natural born citizen, for the enjoyment of his privileges, is also given to all alien friends for the enjoyment of their's; and that those laws were so far from intending to deprive persons in their situation, of any privilege which would prevent them from having as full and as fair trials as natural born citizens were entitled to, that they have in certain cases, allowed them to claim privileges in our courts (such as that their jury should consist of half foreigners) which were allowed to no other persons; and the federal constitution also declares, that in *all* criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by jury; and that the trial of *all* crimes shall be by jury. We find in these clauses no terms of restriction which can confine their operation, or the privileges they were intended to grant, to any particular person; on the contrary, the expressions used in the constitution, are as general as they could have been, such as, *no* person, in *all* criminal prosecutions, *all* crimes, &c.

Suppose an alien who had resided here many years, under the protection of the state laws, and in the enjoyment of the privileges given him by those laws, without having been naturalized under the law of the United States, was to be prosecuted for treason; would he be tried by a jury? Certainly he would. If so, it would be because the law directs that this shall be the case; for there can be but one legal mode of trial, no discretionary power having been vested in any court, to prescribe or alter the mode which shall be pursued. If this is the legal mode of trial, it is the privilege of the alien to have it followed, and in a prosecution for treason, he could not be legally deprived of it. And if this would be his privilege in a prosecution for treason, although he had never been naturalized, the constitution

secures it to him equally in all other cases, where accusations are brought against him; because it declares, that, "in *all* criminal prosecutions, *the accused* shall enjoy the right to a speedy and public *trial, by an impartial jury*, of the state and district, wherein the crime shall have been committed; which district shall have been previously ascertained by law; and *to be informed* of the nature and cause of the accusation; *to be confronted* with the witnesses against him; *to have compulsory process* for obtaining witnesses in his favor; and *to have the assistance of counsel for his defence.*"

Considering this punishment of banishment, as a novelty in our law, it is for that reason also unconstitutional; because the constitution declares that "cruel and *unusual* punishments shall not be inflicted." And although this law directs this punishment to be inflicted on alien friends only, if the principle is once admitted to be a constitutional one, it will soon be extended to natives also: and then the best of our patriots, would, under new-fangled charges of sedition, be sent to Botany Bay, to lament the general downfall of liberty, with the British patriots, who have been already exiled there, under sentences given on similar charges.

This act is also unconstitutional, because the constitution declares, that "the judicial power of the United States, shall be vested in courts, to be established by congress, the judges of which shall hold their offices during good behavior," whereas this act gives the president power, to judge and determine in this case; if that deserves to be called a judgment, which is given without a trial of any kind, and on suspicion only.

If then the aliens who came to this country in consequence of the legal assurances they had received, that they should enjoy certain privileges; that they, in common with all others residing here, should be protected in the enjoyment of all their just privileges; that they should never forfeit them but in consequence of their own improper conduct, and not then, until the charge against them had been established before a proper tribunal, after a full, fair and legal investigation of that charge; I must be warranted in saying, that this law is unconstitutional, because it puts it in the power of the president to banish them, a punishment hitherto unknown to our laws, and now confined to them alone, and that upon suspicion only, and without a previous trial of any kind. That this act is impolitic, no man can doubt, who knows the extent of the present uncultivated tracts of country in the United States.

Until within a very short period, it has been universally admitted as a truth, that there was no line of policy so important to us, as the encouraging of emigration: as a proof of it, the declaration of independence states it as one of our charges against the tyrant George the third, "that he endeavored to prevent the population of these states; for that purpose, obstructing the laws for the naturalization of foreigners; refusing to pass others, to encourage their migration hither, and raising the conditions of new appropriations of land:" and yet, how much did this misconduct of his fall short in its bad consequences, of that which puts it in the power of the president to banish, upon suspicion only, those who have emigrated, or shall emigrate to this country. What man who can exist in any other country, would remove to this, knowing that he was to be subject to such a despotism. This law is so unjust, as well as so obviously impolitic, that it furnishes the strongest presumptive evidence, that the true reasons for passing it, have not been avowed by the favourers of it. It is impossible that any well grounded fears could exist as to a few strangers in America; especially as they were liable to be restrained and punished, by the same laws which are considered as sufficient to control all other evil minded persons, although aided by wealth, and numerous acquaintances and connexions.

The true way to remove all danger from emigrants, is, instead of restraining emigration, to make it as general as possible. In religion, a general toleration, prevents danger from any one sect, as all the others would unite against one, which should attempt to act improperly. So it would happen, if emigrants from every quarter of the globe were admitted to America. The danger apprehended from them, is, that notwithstanding their removal to this country, they would still retain a stronger attachment to their native land, than to America: although the truth of this position might well be doubted, from the reason of the thing, when applied to men who voluntarily left the one country from disgust, to remove to the other, to which they gave a preference; and to men, whose future prospects both for themselves and their prosperity, would all depend on the prosperity of that country to which they had removed; and although the general conduct of the natives of the British dominions who then resided in America, proved the contrary in our war with that nation: I will for argument sake, admit it to be true in its fullest extent, and

yet I should conclude, that no danger could arise from it; provided these emigrants would prefer America to any other country but their own.

This would certainly happen, as well from that predilection to America which brought them here, as from the antipathy which generally prevails between the citizens of the different countries in Europe: for then, in case of a rupture between America and any one nation of Europe, besides her own natural born citizens, she would be aided to the utmost, by all the emigrants from every part of the world, except that particular nation. This is also fully verified by the conduct of the foreigners in general, residing in America, in our present contest with France. So that instead of emigrants weakening America in time of war, she would, by their means, gain as much additional strength, as their total number would exceed the whole number from that nation with which she was at war: and the emigrants even from that country, would be restrained from "adhering to their former countrymen, or from giving them aid or comfort," by the penalties annexed to treason, which such conduct would subject them to.

Perhaps it might have been hoped and expected by the friends of this bill, that a law of this kind would make all the persons coming within its descriptions, perfectly subservient to the will of the president: this idea is confirmed by an address from a number of aliens in Albany, in which they pledge themselves, by every exertion that can be made both with their persons and property, to support *all* the measures of government; in answer to which, they are told by the president, that as long as they do act up to their promise, by supporting by every means in their power *all* the acts of the government, that they shall be treated with *hospitality*.

Perhaps also, a knowledge of human nature, might have convinced the framers of this bill, that the absolute power which it gives the president over those coming within its provisions, would enable him to dictate also to all their connexions, friends and acquaintances, who would not wish to see them banished from the country, and all that they held most dear. But, if the policy of party extended its views still further, and from a knowledge of the existing convulsions in Europe, and the causes which have produced them, wished to put it in the power of the president, to discourage and prevent all who are engaged *there* in struggles for liberty, from emigrating to America, if they are unsuccessful at home; at the

same time, that the door was left open, to receive all the abettors of tyranny, if they failed in their present contest; this act may, in its operations go a great way towards contaminating and destroying those republican principles which now exist in America, and which are the only real support of our present constitution. Whatever effect these suggestions may have on your judgment, I flatter myself that I must have proved to your satisfaction, that this act is *unconstitutional, unjust, impolitic* and *unnecessary.*

You say "we think that no words can justify sedition under a constitution formed as a basis of government amongst a civilized people. We submit with chearfulness to laws *regularly* enacted by a great majority of our rulers."

It is not necessary for us to enquire whether the authors of false and malicious publications, which the law denominates libels, ought to be made punishable by law; because they have always been liable to such punishment. The question is, has congress a right to pass a law on that subject, and under the pretext of providing a punishment for that offence, which the laws of the different states had before sufficiently provided, to destroy the liberty of the press, contrary to an express prohibition contained in the federal constitution?—Seditious writings do not constitute the only, or the greatest offence which can be committed against the community; why, then, has not congress provided punishment for the others? Certainly, for this reason, because they had no constitutional power *given them* to pass such laws. There is the same reason against their passing laws on this subject, with this additional one, that the constitution expressly declares, that "they shall pass *no* law abridging the freedom of the press."

If it is asked where is the injury arising from this law, if there were other laws on the same subject existing in the different states, prior to the passage of this law? I answer, that the wrong consists in their assuming to themselves, a power to legislate on a subject, not only not intrusted to them, but absolutely forbid them, by the constitution; that if this is once allowed, the only barriers contained in the constitution for the security of liberty, will be destroyed; and that this law ought to be considered, not as the final regulation which is intended to be made on this subject, but as an experiment only, to try the temper of the people; and as the forerunner of other acts that would soon be passed respecting it, upon a much more extensive scale, if this is submitted to.

If any man doubts that this would be the case, let him examine the infamous sedition bill passed by the senate, which destroyed the liberty of speech, as well as the freedom of the press—a bill which was altered in the house of representatives, so as to bring it into its present shape, only by a very small majority. But, even that bill was not more unconstitutional, than the one which was actually passed, because the constitution gives no other security for the enjoyment of one of these privileges, than it does for the other; and they might, also, at the same time, as constitutionally, have attacked religious liberty; because that also depends on the same clause in the constitution, which is in these words: "Congress shall make *no law* respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech or of the press, or the right of the people peaceably to assemble, and to petition the government for a redress of grievances."

But it is argued by the friends of the law, that if similar laws do now exist in the different states, that this law does not *abridge* the freedom of the press, and, therefore, is no violation of the constitution This, by no means, follows as a consequence, for altho' the state legislatures may have constitutionally passed laws on this subject, under the powers given to them by the state constitutions, yet congress could have no right to pass such laws, when the federal constitution declares that they shall pass *no* law respecting it.

The prohibition contained in the federal constitution is, *that congress shall not exercise this power at all*, but leaves the power, as it stood before, in the state governments; and the laws existing in the state governments, rendered the passing of such a law by congress altogether unnecessary. Because, as seditious writings were forbid and punishable by the laws of every state, and as no officer of the general government lost the protection of the state laws by going into office, he would have the same right to apply to a court under the state laws, for redress against any injury of this kind, that any other citizen would have. Besides, the remedies given by this act are public prosecutions, and it has been solemnly determined in common law courts, that a libel against an official character, belonging even to a foreign country, is cognizable and punishable in those courts: there can be no doubt, therefore, but that a libel against an officer of the general government, which is so immediately connected with the state governments, as to be in some respects the government of each

state also, and whose constitutional acts are the supreme law in each state, would also be cognizable in the state courts.

This argument may also be strongly illustrated in another way—"the United States, in their united or collective capacity, are the objects to which all general provisions in the constitution must refer." Now, it is evident, that though restrictions on the freedom of the press, with various limitations, are known in each state individually, yet in the United States, *as such*, no such restriction was known, prior to the adoption of that constitution; when, therefore, the constitution declares, that congress shall pass no law abridging the freedom of the press, it must mean, that they should establish no legal restriction whatever on it; because any restriction, however small, when imposed by them, would be *abridging* the freedom of the press in the United States, *as such*, as no restriction by them, had ever existed prior to that time.

If this clause receives the construction that I contend for, it has an important and forcible meaning—that congress shall not legislate at all upon this subject, and leaves it with the mass of powers, which were reserved to the state governments; but if it is construed to have reference to the restrictions imposed by the state governments on the freedom of the press, by authorising congress to impose similar ones, it is nugatory; because it would make the extent of their power depend on the state regulations, on this subject; and would make their laws change and fluctuate, with all the alterations that would be made by the states respecting it; and it would be void, also, for its uncertainty, because, as the restrictions are different in the several states, and as the laws of no particular states are declared to be the criterions which should regulate the conduct of congress on this subject, any law they could pass respecting it, would "abridge the freedom of the press," in some of the states, altho' it might not do it in others.

Unfortunately for the favourers of this doctrine, their oracle, Hamilton, has reasoned against it in the most conclusive manner, when proving that a bill of rights was not only unnecessary, but that it would have been even dangerous: He says—"I go further, that bills of rights, in the sense and in the extent in which they are contended for, are not only unnecessary in the proposed constitution, but would even be dangerous. They would contain various exceptions to powers which are not granted; and on this very account,

would afford *a colorable pretext*, to claim more than were granted. For, why declare that things shall not be done, which there is no power to do? Why, for instance, should it be said, that the liberty of the press *shall not be restrained*, when no power is given by which restrictions may be imposed? *I will not contend that such a provision would confer a regulating power*, but it is evident, that it would furnish, *to men disposed to usurp, a plausible pretense for claiming that power*. They might urge with a semblance of reason, that the constitution ought not to be charged with the absurdity, of providing against the abuse of an authority, which was not given, and that the provision against restraining the liberty of the press afforded a clear implication, that a power to prescribe proper regulations concerning it, was intended to be vested in the national government. This may serve as a specimen of the numerous handles which would be given to the doctrine of constructive powers, by the indulgence of an injudicious zeal for bills of rights."

This reasoning of his, is also a sufficient answer to the argument which they draw, from this prohibition on the power of congress, being contained in an *amendment* to the constitution; which, as they suppose, is an admission *by implication*, that the constitution itself did give a power to abridge the liberty of the press. This argument may also receive several other satisfactory answers.

Suppose this reasoning was just, would it not follow, that after the amendment had taken place, by which a change had been made in the power given to congress in this respect by the constitution, that that power, as far as it was inconsistent with the amendment, would be as effectually done away, as if it had never been given by the constitution; and as the amendment says they shall pass *no law* abridging the freedom of the press, it certainly does it away entirely. Besides, the preamble to the amendments states, that "the conventions of a number of the states having, at the time of their adopting the constitution, expressed a desire, in order to prevent a misconstruction or abuse of its powers, that further *declaratory and restrictive* clauses should be added—and as extending the ground of public confidence in the government, will best ensure the beneficent ends of its institution:"—

Considering then this particular clause in the amendment, as being either *declaratory or restrictive*, it would be contrary to common sense, as well as every rule of legal construction, to make this clause,

which also in itself contains the strongest *prohibition* against the exercise of such a power, amount to an authority to exercise it. Further, admit that this amendment does prove in the fullest manner, that the constitution did give congress such a power, yet as they had never, prior to the adoption of that amendment, really exercised that power, the amendment does away that power as effectually, as if it had never existed at all. For, as the liberty of the press was not actually abridged, altho' congress had a power under the constitution to abridge it, until they had actually exercised that power; congress could not, after the adoption of the amendment, pass any law on that subject, because that law would then, *as to the United States*, for the first time, have "abridged the freedom of the press," which the amendment declares, that no law of their's shall do.

Another strong argument, that the constitution did not intend to give, and that the amendment did mean to prohibit altogether, the power of making laws on this subject, is, that no checks are to be found in either, similar to those contained in the bills of rights in the several state constitutions, guarding this power against abuse. But, even this bill admits that every such law ought to be guarded against an abuse of the power which it gives; did the framers of this constitution then intend to leave it to the pleasure and patriotism of Harper and Otis, and the other friends to arbitrary power, either to guard their bills of this kind properly, or to send them out unshackled, that they might the better effect their purpose, of inspiring terror.

The advocates of this bill give it great merit, because it declares, that in every prosecution founded on it, the defendant shall be at liberty, "to give in evidence, in his defence, the truth of the matter contained in the publication charged as a libel." I can never acknowledge the justice of a thief, who restores to a man he has robbed, a part only of what he has taken from him; but, if I understand this bill, this clause is so far from restoring anything, which had been before taken away; that it adds mockery to oppression. In some cases, the privilege of giving the truth of the charge in evidence, on a prosecution for a libel, would be important; if, for instance, A. was to publish in writing, that B. was a horse thief, and had stolen his horse; if A. was indicted for this as a libel, it would be of great importance, and a complete justification to him, if B. was really guilty of the charge, to be allowed to give the truth of it in evidence. But

in the prosecutions contemplated and authorised by this act, this would, in ninety-nine cases out of an hundred, be no privilege at all.

This act declares, that "if any person shall publish any false, scandalous, or malicious writing against either house of the congress of the United States, or the president of the United States, with intent to defame or bring them or either of them into contempt or disrepute, or to excite against them or either of them the hatred of the good people of the United States, that he shall be punished by fine and imprisonment." Now, it must be obvious, that very few charges that will be brought against either house of congress, or the president, will be founded on a single or a simple fact, which will be capable of being proved by testimony, as might be done in the case already put, of a charge brought against a man for stealing a horse.

All political writings contain not only facts, but also reasoning and deductions drawn from those facts; and the object of the writer, must generally be illustrated by the reasoning and deductions drawn from the facts, and not from the facts themselves: and the libel if it is one, will consist generally, in what is contained in that reasoning and those deductions, and not in the facts. But evidence can be given only of the truth of facts, and no testimony can be brought to prove, the truth of the opinion stated as arising out of those facts. The consequence therefore must be, either, that A will be found guilty of the charge brought against him, because he does not prove the truth of that which is incapable of being proved; or that he will be found guilty or acquitted, according to the political sentiments of his jury: upon the same charge, a jury of republicans would acquit him,—a jury of aristocracts would condemn him—A would be acquitted to day, and B condemned tomorrow, for the same publication. Can this be right; if it is not, does it not prove unquestionably, that this pretended privilege is a delusion only?

I will illustrate this reasoning by two examples; suppose A was to publish in writing, that the president had by his writings declared his approbation and esteem of monarchical governments; and his disapprobation of and dislike to, republican principles; and was to argue from thence that he was unworthy of the confidence of a people, living under and attached to, a republican government: and was also to assert, that the sedition bill was a violation of the constitution in a very plain instance; and was then to argue, that all who had been concerned in the passing of it had violated that con-

stitution, and by doing so, had also violated their oaths, by which they were bound to support that constitution. If A was tried for this publication, he might prove by the president's writings and the sedition bill, that what he said as to them was true; but how could he prove, that the inferences that he drew from them,—that the president was unworthy of public confidence, and that all concerned in passing the sedition bill had wilfully violated the constitution and their oaths, was true also? Neither could be proved by testimony, and yet as a freeman, A had a right to form this opinion; and the opinion itself being founded on facts, he had a right to communicate it to his fellow citizens, to prevent them, from placing an improper confidence a second time in these men. But for this opinion, A would be either applauded or condemned by a jury, according to their private political sentiments.

This law then in the first place, declares it to be an offence to publish a writing, the truth of which is from its nature incapable of being proved; and then graciously adds, that before you are convicted of this offence, you may if you please, make an attempt to prove the truth of the charge, although that attempt when made, must be ineffectual because it is to do a thing, which is impossible to be done. If the writer's condemnation or acquittal, is to depend on the political opinion of a jury collected in a country, rent into political factions, and selected by an officer, under the absolute influence and control of his prosecutors and enemies; will it not put a total stop to all political writings, but those in favor of the measures of government: and how long will even the shadow of liberty remain, after the door of information, is by that means effectually barred against the body of the people?

So far from it's being right to abridge the freedom of speech or of the press, when it is exercised to censure the measures of government; it is the only time, when it is necessary to protect either of them. As long as the speaker or writer approves of their measures, he may not only proceed with safety, but he will be thanked and paid for it. If he praises handsomely, he will be taken into favor—if he deifies the object of his flattery, he will confess that he has "melted his heart." It is said that a pleasing song has been paid for with an office; that many have been given as rewards for addresses; and that more than one have been taken from those who refused to become addressers.

What has been said must prove that the liberty of the press ought to be left where the constitution has placed it, without any power in congress to abridge it; that if they can abridge it, they will destroy it; and that whenever that falls, all our liberties must fall with it. I cannot close this part of the subject better, than by copying what was said respecting it, by our late envoys; their expressions on this occasion are so just and forcible, as to give real cause to lament that their abilities *are not oftener exerted* in illustrating and enforcing republican principles. They say "the genius of the constitution and the opinions of the people of the United States, cannot be over-ruled by those who administer the government. Among those principles deemed sacred in America; among those sacred rights considered as forming the bulwark of their liberty, which the government contemplates with *awful reverence*, and would approach only with most *cautious circumspection*, there is none, of which the importance is more deeply impressed on the public mind, than the liberty of the press. That this liberty is often carried to excess, that it has sometimes degenerated to licentiousness, is seen and lamented; but the remedy has not yet been discovered. Perhaps it is an evil inseparable from the good with which it is allied: perhaps it is a shoot which cannot be stripped from the stalk, *without wounding vitally the plant from which it is torn.*"

Do you not discover, how materially the language of many of the warmest advocates of the measures of government, has been changed, respecting these bills. When they were first enacted, they were the causes of great joy and triumph, to the whole party; and the most zealous amongst them, insulted, bullied and threatened all who would not admit, that they were both *constitutional and necessary;* and every art and argument were used, to bring the people into this way of thinking; and notwithstanding they had been opposed by nearly one half of the house of representatives; were disliked by a great majority of the people of America; and were considered as unconstitutional, by great numbers who had always been among the warmest supporters of the government; many of the most influential characters in the government party, took every opportunity to express their contempt, for all who disapproved of them; and the officers of government, to irritate them as much as possible, gave the title of these bills as names, to two of the public armed vessels; calling one, "the Sedition act cutter," and the other "the Alien law smack."

But having failed in all their attempts, either to bully or convince the people; and finding that they were determined not to entrust their liberties to those who advocated these bills; they now admit, that these bills were impolitic, because they were useless; and because they were calculated to create unnecessary discontents and jealousies among us.

But still these men do not acknowledge, that they are unconstitutional; and therefore, if they have it in their power so to do they must to be consistent with themselves, vote for similar bills, whenever they may suppose, that they will be *expedient.* The people who oppose these bills on the ground of their being unconstitutional, ought never to vote for men, who are opposed to them, only because they consider them as being *inexpedient at this time.* It is also extraordinary, that these men who declare that they consider these bills as useless and impolitic, are against the repeal of them; upon a supposition, that an effort to repeal them, would irritate men's minds to such a degree, as to baffle the opposition to the attempt that they suppose will be made by the government party for their revival, after the term for which they are now in force shall expire. So that, the policy of these gentlemen amounts to this; it will be expedient, to let these bills, which they acknowledge to be useless and impolitic, and which nine tenths of the people believe to be dangerous and unconstitutional; continue in force two years longer, for fear of irritating and offending those, who by their voting for and patronizing these bills, have already proved themselves to be, enemies to our constitution and liberties.

Away with reasoning of this kind; intelligent freemen cannot be deceived by it; they will discover that it is an electioneering trick; that it is intended to put them off their guard, and to induce them, to trust their liberties in the hands of men who, even if they are honest in their declarations, differ with them in opinion as to the true meaning of some of the most important parts of our constitution; and who from their own acknowledgements; must be bound in conscience, to vote for similar bills, *whenever* they shall judge it *expedient* to do so. The private virtues of such men ought to be no inducement with the people to elect them, as they will cause them to persevere in opinions, which the people consider as dangerous and destructive; and in those cases, their superior talents, instead of being a public benefit, will only enable them, to spread the poison contained in

their opinions, the more diffusively. A promise on the part of a representative, to obey the instructions of his constituents, is no security to them, when they differ from him as to important political principles. Instructions must go to specified objects, but after they are obeyed as to those objects, the obnoxious principle which was contained in them, may be thrown into another shape, and then the representative may consider himself, as being at liberty to follow his own inclinations.

If therefore, the alien and sedition bills were repealed in consequence of instructions; and not because those who voted for their repeal, thought them unconstitutional; the same principles might afterwards be approved of by the representatives, in other bills, before their constituents would have an opportunity of instructing them, as to them also; and thus there would be an eternal war, between the principles and acts of the representatives, and the wishes and interest of his constituents. The only real security that can be given to the people, that their interest and principles will always be duly attended to by their representatives, must arise from their placing that trust in no man who does not possess both an interest and principles similar to their own. All true patriots should unite in declaring these bills to be *political monsters*, and in demanding that they shall be put out of existence, as soon as it can be done constitutionally: and to prevent other bills of a similar nature, from rising out of their ashes, they should vote for no man who will not unequivocally declare that congress have no constitutional power to pass such bills, under any possible state of things.

But you declare that "you are satisfied with these laws, because they have been regularly enacted by a great majority of our rulers." You are certainly mistaken, as to the fact of their having been passed by a great majority. These bills as well as several other very important measures, were adopted by very small majorities; which circumstance, alone, ought to have been sufficient with moderate men, to have prevented their voting for them; because in a free country, radical changes, even if constitutional ought not to be made, but by general consent. As to the regularity of their passage, I have not enquired into it; but if they had no right to pass such acts, the observance of no forms in the passing of them, could make them constitutional when passed: the most wretched of all governments, is that, where the form of it is retained, after the substance is lost: this

I take to be the present situation of the British government, and is the true reason why their king is now the most absolute monarch on earth.

You say, "We hope to see a force *raised* sufficient to keep peace at home, and awe all foreign powers." If I understand this properly, it amounts, not only to a wish to see a standing army, but also to have one of the largest size; because no other kind could possibly "awe all foreign powers." This, then, is another improvement, which has lately been introduced into our political system; our old patriots considered standing armies, as the most powerful engines of arbitrary power, and the most dangerous enemies to republican governments; but, our modern patriots have discovered, that this was an error, and that a large standing army is a necessary ingredient in a good republican government; altho' they sometimes inform us, also, that France has, within five years, lost her liberty by the means of one, and that she is now governed by a military despotism.

I have read, without emotion, the arguments which have been used in a hireling paper, and by the tools of party in congress, to prove the necessity of having a large standing army, to keep in awe the free citizens of our republican government; because I despised them, as well as their arguments: but, to see those arguments now repeated, by the pen of a real and well informed patriot, makes me shudder. Look at the public declarations of '76, in which you concurred—see how different the sentiments they contain, are, from what you now avow; and then inform me of the cause of the change. It cannot proceed from any apprehensions entertained of internal commotions upon the present occasion, because you declare, that "the unanimity of the people of America is astonishing; and that Kentucky is the only discontented state in the union." I beseech you, my friend, reconsider this subject, and do not put it in the power of the friends of arbitrary power, to quote your opinion as an authority, in favor of one of their most *damnable* doctrines.

You say, "We entertain not any apprehensions of danger from the French; and the Spaniard, the cowardly Spaniard, is too much afraid of us, to give us the least insult in future, however great a favorite he may be in Kentucky." From the obvious meaning of the whole of this sentence, I apprehend, that you have taken up improper ideas of the opinions, views and designs of the people in this country. I will endeavor to give you a true representation of all of them, as far as they have come to my knowledge.

First—as to our dispute with France. We think that our government gave the first real cause of offence to the French nation; that the French have carried their resentment of this injury, to a very unjustifiable length; that our government did not make use of the best, or the most likely means, to heal the breach in the friendship between the two nations; nay, that the steps which they have taken, have had a manifest tendency to widen that breach; that peace might still be obtained, if it was properly sought after, altho' the French have now made very improper and unjustifiable demands on America; and altho' there is reason to suppose, that they have also *now* formed some improper views as to us. We lament that any just cause of offence was given to that nation—we recollect with concern that effectual means were not used to bring about a reconciliation with her, and that all attempts at a reconciliation are now laid aside—we rejoice that her improper demands were rejected—and we think that effectual defensive measures ought to be taken, to guard us against any improper designs that she may now have formed respecting us—but we do not think, that any thing that has happened, could justify our government to their own country, either in commencing or precipitating a war between the two nations—and that even an actual state of war, would not have justified those measures of their's, which I have already observed on; because they exceeded their constitutional powers, and because their evident tendency was, by dividing, to weaken us.

As to the Spaniards—so far from our feeling any predilection for that nation, we have, until lately, been accustomed to view her with very unfriendly eyes; but our resentment against her has ceased entirely, since she has done us justice; and we now wish, to keep up with her, that friendly and liberal commercial intercourse, which is so obviously to the interest of both countries—but we wish to form no other connexion whatsoever with her.

In short, we have no improper attachments to any foreign nation—we are true Americans, having no political objects in view, but the welfare, independence and liberty of our country. And if the time shall really come that they are attacked, by any foreign nation, we will give the lie to those who now slander us—not by presenting "loyal and dutiful addresses"—nor by soliciting for lucrative commissions—nor by enrolling ourselves in the corps of volunteers, which from their having been unconstitutionally raised and officered,

there is every reason to suppose are intended to be used for the worst of purposes—but by turning out as freemen and militia (the only natural, safe and constitutional defenders of their country) to protect and defend all that we hold most dear.

We have been repeatedly informed, that it has been reported in the other states, that it is our wish and intention to separate from the union. I cannot give you any better information on this subject, than is contained in an address from me to the citizens of Kentucky, from which the following is an extract.

"It has been currently reported, and vehemently asserted, that those persons who have in this state, declared their disapprobation of some of the late measures of the general government, are actuated by a wish and a design, to destroy the constitution and the union of the United States. This is a charge of an important nature, and therefore ought to be supported by sufficient testimony. Proof is particularly requisite to support such a charge; because, from the nature of it, it cannot be contradicted by positive proof, as a false charge as to men's actions may generally be. Men's objects and views are locked up in their own breasts, and can be fully known only to themselves; but still such circumstances may be collected from their declarations, their situation, or their conduct, as will go a great way in explaining what their views really are. Some such proofs ought, therefore, always to be given, to support a charge of evil designs. But no proof of any kind, is brought to support this charge; it rests altogether on the assertion of those making it; an assertion, proceeding from malice, and made to answer the views of party. The situation of those against whom the charge is brought, affords the strongest presumptive evidence against the truth of that charge.

"We are citizens of this country, *have our all here*, and consider it as the permanent residence, for ourselves and our prosperity. That which will be to the lasting and ultimate interest of this country, must be to our interest also. Will those who bring this charge against us, say, that it will be to the interest of this state, to separate from the other states in the union? They certainly will not. How then does it happen, that we should wish to see an event take place contrary to the true interest of our country, when our private interest must in that respect be inseparable from that of the state at large. Is this interest of a doubtful nature, or are we alone such fools as not to be able to distinguish it, although there has been no difference of

sentiment on that subject, in any other part of America, for upwards of twenty years? If I understand the nature of the charge, it is not founded on a supposition that we have not understanding sufficient to enable us to comprehend what the real interest of our country is; but that we are wicked enough to wish to sacrifice that interest, to our supposed private views. But, before we ought to be suspected of having sinned intentionally, it should be shewn that we had some temptation to commit that sin. I ask then, what are those private views which are supposed to have influenced our conduct; and what are the personal advantages which could be expected by rational men situated as we are, which would be sufficient to compensate us for the ruin and destruction which would certainly be brought upon our country and posterity, by the adoption of such a measure. Can the wisest man amongst us foresee, if a separation should take place, what would be our political situation? If he cannot, how can he ascertain that that separation would promote his private views? And would any man in his senses, wish to see such an attempt made, with all its attendant dangers, unless he saw clearly that if it succeeded, it would certainly procure him great private advantages? He certainly would not?

"If then no sufficient reason can be suggested from our present situation, or from our future prospects, why we should be supposed to wish to see a separation take place; have we justified the charge which has been brought against us, by any declarations that this is our wish? Examine our public declarations on this subject, they uniformly hold a different language, and those declarations are acknowledged to be in strict conformity to our interest; they ought, therefore to be considered as expressing our true sentiments, until some sufficient evidence is given to prove the contrary. If our private declarations have contradicted those which we have made in public, let it be proved, and I will then agree, that there is sufficient reason to believe that our public declarations are deceitful; but until some proof of this kind is brought, it ought to be supposed, both from our real interest and our public declarations, that we really are warmly attached both to the constitution and the union of the United States.

"Nothing can more justly bring discredit upon accusers of any kind, than their naming one set of persons as being guilty of the charge, at one time and place; and a different set at another time and place.

This is exactly the situation of our accusers, upon this occasion. When this charge is brought forward in this state, it is confined to a few, and it is unequivocally declared, that the body of the people are innocent of it; but when it is mentioned in any other state, the charge is then extended to the state at large: From this it appears that there is a double object in making this false charge, first to deceive the bulk of the people in this state, as to the views of a part of their fellow citizens; and then to give the inhabitants of the other states, false impressions as to the real objects of the people at large, in this state: and to answer the real object of the charge, which is to deceive whenever it is made, it is necessary to confine it to a few, when it is stated here, and to make it general when it is exhibited in the other states. To give this charge some color of truth, when they find that they can adduce no testimony to support it, those who make it, say, that unless we are actuated by such a design as they falsely attribute to us, that no sufficient cause can be assigned for our present political conduct.

"Great, indeed must have been the change which has taken place in the sentiments of the people of America, if they cannot see a sufficient cause for our present conduct, in the belief which is strongly impressed on our minds, that our liberties, and the constitution of our country are in danger: although they may not see these things in the same point of view that we do, they certainly ought to acknowledge, that as long as we are under the influence of these impressions, that that alone will be sufficient to account for our present conduct. They cannot deny the truth of this position, unless they feel a conviction that they have now become so indifferent about their liberties, as to be incapable of making a struggle in their defence, when they shall consider them as being really in danger.

"The different mediums through which we view our present political questions, will naturally cause us to form different opinions concerning them; but, from the opinions which we have really formed as to them, those who differ with us in opinion, ought to be satisfied that our present conduct proceeds from the strongest attachment, and not from enmity to the constitution and the union of the United States: because, as the union is supported, and can be supported only by the constitution, and as that constitution cannot long be preserved, unless it is considered as sacred: those are the only real friends to the union, who endeavor to preserve that constitution from

violation. From the just indignation which you must feel at having the sentiments of the state at large upon this important subject, so much misrepresented in other states; from a knowledge that those who bring this charge against us here, before you, exhibit the same charge against you in the other states before the people of America; you ought to listen with great caution, to those charges which are brought here, against some of your fellow citizens. You should always recollect, that whenever it is found that you cannot be deceived as to measures, that the next most effectual step, is, to try to deceive you as to the views of those who oppose those measures; because it is well known, that if you can be satisfied that their opposition proceeds from base and improper motives, that a part of the just indignation which you would then feel against them, would be transferred to the opposition itself. Prudence as well as charity therefore requires that you should believe no such accusation until it is proved, and then only, as to those against whom it is proved."

I have said so much as to the truth of the charge, considering it as involving others as well as myself; I have stated my opinion and belief, that it is false as to them: so far as I am involved in it, I know, and declare it to be false. From the declaration of independence, to this day, I have been uniformly and warmly, a friend to the union of America; from the time of publishing the present constitution of the United States, by the convention which formed it, to this day, I have been uniformly and warmly a friend to it: and I have proven my attachment to both, as well by my actions as my words.

No action of my life, can be brought forward, which ought to cause a suspicion of the reality of my attachment to either of them. The reality of that attachment was never doubted before I came to this country; the foregoing letters will prove that the government has given me no personal cause of disgust since I came here; and I defy any man to say, that during my residence of nine years and a half in this state, he has ever heard me utter a word, which could prove, that I did not still feel these attachments in the strongest degree: when it is recollected that I now differ in sentiments from several with whom I formerly conversed freely and confidentially, on political subjects, this appeal ought to have its due weight.

I also declare, that so far from my thinking that a separation of the union would be proper, or my wishing to see it take place,

that I am, and always have been firmly of opinion, that it would be destructive, and equally so, to every part of the United States; and that if such an attempt should be made, that I would oppose it by every means in my power: and I do assert, that so far from my being privy to any such design, I do not believe that any such design does exist in this state; and that during my residence in this country, I have never heard even one man, express an opinion that it ought, or a wish that it should take place.

I flatter myself that these observations will be sufficient to remove any unjust impressions which have been made on your mind, as to our opinions and designs. But, since you have mentioned the Spaniards, I will inform you what our *suspicions* are, of the views of our government towards that nation. The war in which we are engaged with the French nation, promises no possible advantages; therefore, although the people of America may have been deceived so far as to induce them to consent to enter into the war, the blood and treasure which must necessarily be expended in its prosecution, without a chance of a beneficial return of any kind; will soon make them sick of such a war, and open their eyes, as to the arts which forced them into it.

But a war with Spain, would hold out all the allurements arising from the prospects of conquering a rich and weak country; and as the Spaniards are now considered by our government, as "as a cowardly people," they probably view that prospect as a very certain one; and for this reason, a war with Spain as well as France, seems to be necessary, to complete the war system of our rulers; and if war with all its attendant powers, armies, navies, &c. &c. has been their real object; and if the improper conduct of the French nation, was only made use of as a pretext to obtain that object; there may be strong reason to apprehend that such a line of conduct will be pursued, as will prevent that war from being terminated *too* soon. But you will recollect that I state this as a suspicion only, which may therefore prove to be groundless, however strong the grounds on which it is built, may now appear to be; and however greatly that suspicion hath been strengthened in my mind, by some facts which have come to my knowledge.

You say "we think *if* Kentuck cannot pay a continental tax of thirty-six thousand pounds, when absentees pay so great a proportion of it, that her opinion on the subject, cannot weigh very

heavily in the scale: especially as she is the weakest state but one, in the union, and the only discontented one." It has long been a prevailing opinion with a certain party in America, that none but "the wealthy and the well born," ought to have any share in government; and the people have been represented on the floor of congress as "an *ignorant herd*, who could easily be cajoled, flattered and deceived;" but this is the first time, as far as I know, at least, that this doctrine hath been applied to any of the sovereign and independent states, which make a part of the union.

If from our poverty and the smallness of our number, the opinion of the state of Kentucky ought to weigh but little in the scale, the same reasons ought to make the claims upon her for taxes, very light also; but as long as we find that these are enormously heavy, we cannot consent that the other shall be considered as weighing nothing: the constitution declares that the weight of the one shall be in proportion to the amount of the other; and that each state, as well as each freeman in the United States, whether rich or poor, shall have an equal right to express his sentiments on all public questions. But, how do you come at the sum of thirty-six thousand pounds, as being the amount of our continental tax, we will thank you if you will prove that it will come to no more. Our proportion of the direct tax of two million of dollars, is thirty-seven thousand, six hundred and forty-four dollars, and this is the proportion which is taken from the last census, but it is reduced to a certainty, that a new census would increase that proportion more than one third. But this direct tax produces only a very small part of the sum, which is now required by government, from the people, by way of taxes; for, I find by an estimate before me, that the whole expenditure of government, as now authorized by law, may amount in the present year, to twenty-one million, three hundred and twenty-one thousand, seven hundred and eighty-six dollars, without including any part of the expenses which will be caused by the volunteers, if they should be called into service. Of this, our proportion would come to four hundred and one thousand, three hundred and thirteen dollars, according to the present census, and if you add to this sum the additional third, that the new census would oblige us to pay, we shall after a new census takes effect, upon the same annual amount of taxes, have to pay as our proportion of them, the sum of five hundred and thirty-five thousand and eighty-three dollars.

I know that a great part of the money that will be paid to the government, will be raised by the impost and the excise; but I am also well assured, that we shall pay as much more than our proportion of the excise, as we shall pay less than our proportion of the impost, if that fact is really so, which I do not admit to be the case. I have, from this view of the subject, no hesitation in declaring, that make the estimate of what we shall actually have to pay, in any way you will, that the amount must greatly exceed our abilities. I am happy to hear that your country is in so flourishing a condition, as to be able to pay her proportion of this sum "with pleasure;" but shall be better pleased, if the experiment, when actually made, shall prove that this is really the case; for I apprehend that you may have been as much mistaken in the real amount of her proportion, as you were in that of Kentucky. Virginia's proportion of the two million of dollars, was three hundred and forty-five thousand, four hundred and eighty-eight dollars, and of consequence, her proportion of twenty-one million, three hundred thousand, will be three million, six hundred and eighty-five thousand, two hundred and five dollars.

You say "Jefferson and his adherents are fallen into the utmost contempt; and the factious members with us, are *sculking off* like the owls at the rising of the sun. With few exceptions (and there will always be some strange wrong headed creatures) the unanimity of the people is astonishing." I am happy in having an opportunity of declaring, when it can be attributed to no improper motive, that I have long since, changed the unfavorable opinion, which I once formed of that gentleman's political conduct, and that I consider him, as one of the most virtuous, as well as one of the ablest, of the American patriots.

My information has led me to form, a different opinion from what you have done, as to the general sentiments of the people in Virginia, and as to the degree of esteem, in which, what you call your "factious members," are held by their constituents. I have been told, that except where some of your present representatives who would certainly have been re-elected, if they would have consented to it, have declined offering their service again, on account of their bad health, or from domestic considerations; that there will be very few changes made in your present representation; and that where the present republican representatives are willing to serve again, and are opposed by aristocrats, that the latter, knowing that

the bulk of the people do not think with them, are so far from avowing in an open and manly manner the sentiments of their party, that they assure the people that altho' they do differ with them in sentiment, in some things, that that difference is not as great as it has been represented to be, and that as far as they do differ with them, they will if they are elected, sacrifice their own opinions to those of their constituents, if they will instruct them on the subjects constituting that difference.

If these facts are so, they prove unquestionably, that they are conscious, that they do not possess the confidence of the people; and that they cannot be elected but upon the humiliating condition, of their promising beforehand, to advocate principles which they disapprove; and these facts would also have justified you fully, if instead of saying "that the present members were sculking off," you had declared, that their opponents were "trying *to sneak into office.*"

You say "the greatest confidence is placed in our firm old president, and the glorious Washington."

We do not place the greatest confidence in our present president, because we think his political and official conduct do not merit it. The bounds of a letter, which is already too long, will not permit my now stating the reasons of that opinion; but you will probably soon see them at large. The citizens of this country have always entertained the most exalted ideas of the talent, as well as the virtues, of our late president: but we cannot put implicit confidence in any man's opinions; neither can we be duped, by an expectation of receiving a kind of service from him, which his present situation as commander in chief, will not enable him to render. When he was president, he had it in his power, and it was his duty, to dictate the measures which were to be pursued; but as commander in chief, he has no hand in directing public measures, and is equally bound with a corporal, to obey those that are directed by others. His influence and his talents, may have a great effect in carrying into execution those measures which are dictated by others; and if those measures are wise, just and constitutional, his services as a general will produce the happiest consequences. But if those measures should be weak, destructive, and unconstitutional, then the great support they would receive from his name and talents, would be the greatest of misfortunes to his country. As commander in chief, we may safely calculate on receiving the most essential services from him, against any invading foreign enemy;

but as commander in chief, we cannot derive any aid from him, against domestic tyranny, and violations of our constitution.

No man doubts, if we are ever made subject to such a tyranny, but that it will be produced by violations of our constitution, by those who are invested with the powers of government: but the armies of the United States are raised by their order; those armies are probably now to be *standing armies*, unconnected with the people, and having a separate and distinct interest from them: all their officers are to be appointed by one man, and to be entirely dependent on him for their continuance in commission: even the commander in chief could be dismissed by the president at any moment he thought proper, by a "Sir, I have no further occasion for your services." Where then is the security which can be derived, or ought to be calculated on, from his being in office, when the time of his continuing in office depends upon the arbitrary will and pleasure of another; and when at the very moment that his being in office might be really important, he would be liable to be discharged from it? When you entrust the exercise of power to a virtuous man, you are safe; but if the man to whom the power itself is entrusted, is vicious, no security can be derived from a temporary appointment, or one during his pleasure, made by him, of *an angel* to exercise a part of that power, under his orders; because the angel must obey, and because he will be exchanged for a different character, whenever measures are brought into such a state, as to require a different character to execute them.

But it may be said, that if our present commander in chief should ever be convinced, that the measures which were to be executed by him, had an evil and destructive tendency, that he would resign his commission, and sound the alarm of danger to the people of the United States. Admit that this would be the case, and yet this very argument proves the justness of the idea, that there is no security to liberty from his being in his present office; because, if the only proper and honest step he could take, upon his being convinced that dangerous designs were formed against the liberties of his country, would be to resign his office; what security can be derived from his now being in office, when, even if he is not dismissed from it, he must conscientiously retire from it, as soon as the hour of danger to our liberties, shall in his opinion arrive. For although his resignation, and his declaration of the reasons which caused it, might have a great effect on the minds of the people, they would probably be made too

late to produce a change in public measures; because the schemes against the liberty of our country, would then be ripe for execution; and the means which those who planned those schemes, would have been long accumulating for their execution, would be an overmatch for any opposition which could then be made to them.

We deceive ourselves greatly, if we suppose, that the virtues or popularity of any general, would upon his resigning his commission, or his being dismissed from the service, produce any convulsion or dangerous commotion, in a standing army. In such an army, both officers and soldiers know, that their pay and support do not come from him, but from the hand which appointed him. If then the keeping of their commissions and that pay, were their great and leading objects, in case of a quarrel between the president and their general, they would never take part with the latter, when they knew that the first could dismiss them at a word altogether from the service, and when all that the other could do, would be to recommend them as proper persons to fill occasional vacancies. Besides, although this limited kind of patronage, must necessarily give the general who possesses it, the means of making himself many friends, the exercise of it, will also make him a much greater number of enemies; as the number of those who will expect promotion, will always greatly exceed that of those, who will actually meet with it. In consequence of this, the disappointed will always constitute a great majority of the officers in the army; and it is to be presumed that a change which would give them a chance of being more successful in their applications for promotion to a new general, would be pleasing, rather than otherwise, to them.

The history of the French revolution affords abundant examples to justify these ideas. We there see, the most popular generals retiring, dismissed and beheaded, without its having had the smallest effect in the army. Under such a government, and in such a situation as ours, a popular military character may be of infinite service to an ambitious man, in raising an army, and in keeping every thing in order, until he supposes his power sufficient to execute his purpose, and until his schemes are ripe for execution; and then, if this popular character, is from his being a virtuous man, an improper instrument for the execution of those schemes, he will be laid aside as useless, or sacrificed, as may be thought most proper under the existing circumstances.

Many instances exist of the last kind in the history of all countries; and a striking one of the first, in the history of England, during the time of the commonwealth. Fairfax was the commander in chief of the army; he was a successful and a popular general, and a virtuous man. He was kept in office until the plans of those who meditated a change in the government, were ripe for execution. They knew that he would never consent to that change, and the command of the army was then put into other hands. This alteration was made, without its causing any sensible alteration in the temper of the army; other officers were readily found to do what he would not have done, and the army was made the instrument to destroy even the shadow of liberty. What has happened, may happen again; and when we are calculating on its probability, we should recollect, that the monarchy-loving Hamilton is now so fixed, as to be able, with *one step*, to fill the place of our present commander in chief.

You say, "ninety thousand volunteers have offered their services, and been enrolled, to march with the utmost promptitude against foreign or domestic foes. If you oppose the laws, you will soon have old Morgan amongst you, at the head of fifteen or twenty thousand." I will assert with confidence, because I know that I cannot be contradicted with truth, that there is not only no action of ours in the present business, which ought to be considered as improper, but that there is not even a single sentiment which we have uttered, which can be pointed out, as worthy of censure. See our resolves throughout the state; they breathe one uniform spirit of attachment to the union, and to the constitution of the United States, and our fixed purpose of defending them against any enemy: it is true, they go further, and express in strong terms, the determined resolution of our souls, that we will sacrifice every thing we hold dear, before our inestimable liberties shall be torn from us, either by "foreign or domestic foes."

Are these declarations the causes of the offence taken at our conduct? Do they constitute our deadly sin? And is it for having made them, that we are now threatened with being *dragooned* by that army, which was "raised to keep peace at home?" But let this threat have been caused by what it may, it will be ineffectual. Conscious that we wish nothing that is improper; that both our declarations and actions have been in strict conformity with our double

duty as free men and citizens, we shall persevere in the proper discharge of that duty, regardless of the consequences: and so far from being intimidated by such threats, they confirm all our former apprehensions of danger to our liberty, from the late measures of our government; for if the new powers and force put into their hands, had been placed there with a good design, they would not so soon have dared to threaten to use them, for the most wicked of purposes. So far from our considering it as a reflection to have it said of us that we are the only discontented state in the union, we rejoice, if that is really so, that it will be recorded in the page of history, that "the poor weak and despised" state of Kentucky, was the only state in the union, which as a state, declared its opposition to those unconstitutional acts of the general government, which threatened with the impetuosity of a torrent to sweep all our liberties before them.

But I cannot believe, that the fact is, that this is the only state in the union, which judges properly of these measures, and which will discover a just abhorrence of them. If no other state in the union thinks as we do, Virginia, the ancient, the great, the powerful, the rich and the republican state of Virginia, still remains free and independent; and if she had not dared to vote against our president from a dislike to his political sentiments; if she had not still retained her republican principles; and if she had not thought and been determined to act, as we have done; she would not have been grossly insulted, by a threat made by *a servant of the people*, that she should be "humbled in the dust and ashes." A threat the more insulting, because it was unprovoked; not being caused by any thing which had then been done in that state, but proceeding from an anticipated fear, that she would do something, which *the servant* using the threat was pleased to suppose, would be improper. But disgraceful and humiliating as the condition of Virginia was, when labouring under, without resenting, this gross insult; *it* is now done away, *it* is burried entirely in the recollection of, *that* never to be forgotten, that never to be equalled *offence;* that *treason* against the majesty of the people, which was committed by *that servant of a servant*, who when a constitutional address was sent to him, as an officer, by the free inhabitants of a large country, to be delivered to the president, returned it with a positive refusal to comply with their request; accompanied also, with the most scandalous abuse of them, and their sentiments.

O Virginia, whither has that unconquerable spirit fled, which was once the admiration of the world; which, stimulated you to be the foremost, in raising the standard of opposition to a tyrant, altho' he was the absolute master, of the force and resources of three kingdoms? Is that spirit evaporated and gone, or is it sunk so low, as to suffer you to *crouch* at the threats of your own servant and *submit* with patience, to the insolence of, *the servant of that servant?* "The lion is not dead, he slumbers only;" rouse, rouse, my countrymen, once more put on, and use, the determined countenances and language of freemen; you need only declare that you will be free, to be so in reality. This is a time of struggle, of servants against their masters; if the masters do not support their authority, they must, they will, change places with their servants, and in their turn become "hewers of wood and drawers of water."

But all that is necessary to be done, is for the masters to declare, that this shall not be the case; as soon as the servants are really convinced, that this is the determination of their masters, their "indignant frowns" will give place to the most courtly smiles, which will then overspread their countenances, as they now do, those of your "would be representatives." Office and its powers and emoluments, are their object; they will get and keep them, on their own terms if they can; but if they cannot obtain, or hold them, on those terms, they will take them on your's, sooner than not possess them.

If you had been better acquainted with the citizens of Kentucky, you would have known, that there was no just cause to apprehend an improper opposition to the laws from them. The laws which we complain of, may be divided into two classes,—those which we admit to be constitutional, but consider as impolitic; and those which we believe to be unconstitutional, and therefore do not trouble ourselves to enquire as to their policy; because we consider them as absolute nullities.

The first class of laws having received the sanction of a majority of the representatives of the people of the United States, we consider as binding on us, however we differ in opinion, from those who passed them, as to their policy: and although we will exercise our undoubted right of remonstrating against such laws, and demanding their repeal as far as our numbers will justify us in making such a demand; we will obey them with promptitude, and to the extent of our abilities, so long as they continue in force.

As to the second class, or the unconstitutional laws, although we consider them as dead letters, and therefore that we might legally use force in opposition to any attempts to execute them; yet we contemplate no means of opposition, even to these unconstitutional acts, but an appeal to the *real laws* of our country. As long as our excellent constitution shall be considered as sacred, by any department of our government, the liberties of our country are safe, and every attempt to violate them may be defeated by means of *law*, without force, or tumult of any kind: and the more unconstitutional an act of the legislature shall be, the easier it will be to defeat it in this way; because there will be the less doubt of its having violated the constitution. How strongly then ought we to be attached to a constitution, which contains within it, what must be a sufficient security, until all the departments of our government shall be corrupted, against all attempts to violate it, or to infringe our liberties: it is a truth, which should be solemnly and lastingly impressed on the mind of every true American, that he ought at all times to be ready to defend this constitution at the hazard of his life. Hamilton argues on this subject of the security to liberty, arising from the constitution, as he does on all others, where he has truth on his side, as well as it is in the power of man to do.

"The complete independence of the courts of justice, is peculiarly essential in a limited constitution. By a limited constitution, I understand one which contains certain specified exceptions to the legislative authority; such for instance as that it shall pass no bills of attainder, no *ex post facto* laws, and the like. Limitations of this kind can be preserved in practice no other way than through the medium of the courts of justice; whose duty it must be to declare all acts contrary to the manifest tenor of the constitution void. Without this, all the reservations of particular rights or privileges would amount to nothing.

"Some perplexity respecting the right of the courts to pronounce legislative acts void, because contrary to the constitution, has arisen from an imagination that the doctrine would imply a superiority of the judiciary to the legislative power. It is urged that the authority which can declare the acts of another void, must necessarily be superior to the one whose acts may be declared void. As this doctrine is of great importance in all the American constitutions, a brief discussion of the grounds on which it rests cannot be unacceptable.

"There is no position which depends on clearer principles, than that every act of a delegated authority, contrary to the tenor of the commission under which it is exercised, is void. No legislative act therefore contrary to the constitution can be valid. To deny this would be to affirm that the deputy is greater than his principal; that the servant is above his master; that the representatives of the people are superior to the people themselves; that men acting by virtue of powers may do not only what their powers do not authorise, but what they forbid. If it be said that the legislative body are themselves the constitutional judges of their own powers, and that the construction they put upon them is conclusive upon the other departments, it may be answered, that this cannot be the natural presumption, where it is not to be collected from any particular provisions in the constitution. It is not otherwise to be supposed that the constitution could intend to enable the representatives of the people to substitute their *will* to that of their constituents. It is far more rational to suppose, that the courts were designed to be an intermediate body between the people and the legislature, in order, among other things, to keep the latter within the limits assigned to their authority. The interpretation of the laws is the proper and peculiar province of the courts. A constitution is in fact, and must be, regarded by the judges as a fundamental law. It therefore belongs to them to ascertain its meaning, as well as the meaning of any particular act proceeding from the legislative body. If there should happen to be an irreconcilable variance between the two, that which has the superior obligation and validity, ought of course to be preferred; or, in other words, the constitution ought to be preferred to the statute, the intention of the people to the intention of their agents.

"Nor does this conclusion by any means suppose a superiority of the judicial to the legislative power. It only supposes that the power of the people is superior to both; and that where the will of the legislature declared in its statutes, stands in opposition to that of the people declared in the constitution, the judges ought to be governed by the latter, rather than the former. They ought to regulate their decisions by the fundamental laws, rather than by those which are not fundamental.

"This exercise of judicial discretion in determining between two contradictory laws, is exemplified in a familiar instance. It not uncommonly happens, that there are two statutes existing at one

time, clashing in whole or in part with each other, and neither of them containing any repealing clause or expression. In such a case, it is the province of the courts to liquidate and fix their meanings and operation; so far as they can by any fair construction be reconciled to each other; reason and law conspire to dictate that this should be done: Where this is impracticable, it becomes a matter of necessity to give effect to one, in exclusion of the other. The rule which has obtained in the courts for determining their relative validity is that the last in order of time, shall be preferred to the first. But this is a mere rule of construction, not derived from any positive law, but from the nature and reason of the thing. It is a rule not enjoined upon the courts by legislative provision, but adopted by themselves, as consonant to truth and propriety, for the direction of their conduct as interpreters of the law. They thought it reasonable, that between the interfering acts of an *equal* authority, that which was the last indication of its will, should have the preference.

"But in regard to the interfering acts of a superior and subordinate authority, of an original and derivative power, the nature and reason of the thing indicate the converse of that rule as proper to be followed. They teach us that the prior act of a superior ought to be preferred to the subsequent act of an inferior and subordinate authority; and that, accordingly, whenever a particular statute contravenes the constitution, it will be the duty of the judicial tribunals to adhere to the latter, and disregard the former.

"It can be of no weight to say, that the courts on the pretence of a repugnancy, may substitute their own pleasure to the constitutional intentions of the legislature. This might as well happen in the case of two contradictory statutes; or it might as well happen in every adjudication upon any single statute. The courts must declare the sense of the law; and if they should be disposed to exercise WILL instead of JUDGMENT, the consequence would equally be the substitution of their pleasure to that of the legislative body. The observation, if it proved any thing, would prove that there ought to be no judges distinct from that body."

As long therefore as the federal courts retain their honesty and independence, our constitution and our liberties are safe; and a corrupt faction which should enact, and be desirous of enforcing, unconstitutional acts would be placed in this dilemma; if they at-

tempted to enforce them, the courts would declare them to be void: if they did not make the attempt, it would amount to an acknowledgment on their parts, that they were unconstitutional; which would certainly and deservedly bring both the president and congress "into contempt and disrepute with, and excite against them the hatred of, the good people of the United States." I shall leave you to judge, whether the president's having altogether neglected that part of his duty, which requires him "to take care, that the alien and sedition bills, should be faithfully executed," amounts to such an acknowledgment. But altho' uncorrupt judges always have a constitutional power, to prevent the operation of unconstitutional acts; it is not equally in their power to enforce such acts: for when their decisions shall be, *evidently contrary* to common sense and justice, as well as to the constitution, the minds of the people will revolt against them; and then, instead of their promoting a general acquiescence in, and obedience to unconstitutional acts, they will certainly cause a general opposition to them, and that of the most dreadful kind; because all men will then see, that there is no alternative left them, but resistance or slavery.

A judicious writer expresses himself thus on this subject—"That the conduct of the judges, even in their collective capacity, may sometimes be as censurable and corrupt as that of any other class of men, the decision of the judges in the case of ship-money, affords indeed, a very memorable instance. Lord Clarendon himself, though both a lawyer and a royalist, expresses great indignation at the iniquitous conduct of the judges at that period, and speaks of their decision, as having been productive of the most pernicious consequences. He remarks, that the payment of ship money was more firmly opposed, after the judges had declared it to be legal, than it had been before. That pressure, says he, was borne with much more chearfulness, before the judgment for the king, than ever it was after; men before, pleasing themselves with doing something for the king's service, as a testimony of their affection, which they were not bound to do; many really believing the necessity, and therefore thinking the burthen reasonable; others observing, that the advantage to the king was of importance, when the damage to them was not considerable; and all assuring themselves, that when they should be weary, or unwilling to continue the payment, they might resort to the law for relief, and find it.

"But when they heard *this demanded* in a court of law, *as a right*, and found it, by sworn judges of the law, adjudged so, *upon such grounds and reasons as every stander-by, was able to swear was not law*, and so had lost the pleasure and delight of being kind and dutiful to the king; and instead of giving, were required to pay, *and by a logic that left no man any thing which he might call his own: they no more looked upon it as the case of one man, but the case of the kingdom, not as imposition laid upon them by the king, but by the judges, which they thought themselves bound in conscience to the public justice not to submit to.* And here the damage and mischief cannot be expressed, that the crown and state sustained, by the deserved reproach and infamy that attended the judges, by being made use of in this and like acts of power; there being no possibility to preserve the dignity, reverence, and estimation of the laws themselves, but by the integrity and innocency of the judges."

Even the courtier Blackstone declares, that "to vindicate their rights, when actually violated or attacked, the subjects of England are entitled in the first place, to the regular administration and free course of justice in the courts of law; next, to the right of petitioning the king and parliament for redress of grievances; and *lastly*, to the right of having and using arms, for self-preservation *and defence.*"

And the same author also declares, that the right of *resistance* is a natural right, when "*the sanctions of society and laws are found insufficient to restrain the violence* of oppression." This right of resistance is also recognized and established in the fullest manner, by the federal constitution, as well as those of the different states; but it is a right which it can never be necessary to have recourse to, until all the departments of the government shall become corrupt; and ought not then to be appealed to, except in cases of extreme danger and necessity. Let all good men unite their efforts to prevent the United States from being brought to that dreadful crisis.

You say, "28,000 persons have offered for commissions in the regular service." From the best calculation I can make, it would not take more than 500 officers for the corps of regulars; so that there were 56 applicants for each commission which was to be disposed of; and 27,500 of those who did apply, must have been disappointed. You do not say what became of those, who were not happy enough

to receive commissions. Did their zeal and enthusiasm, when they found they could not serve their country in the station they would have preferred, cause them to enlist as privates, which no interest was necessary to procure them permission to do? I fear not; the American patriotism of the present day, is not of the kind which makes the greater part of those who are under its influence, ready to sacrifice life and fortune, and engage in the most disagreeable and unprofitable service, to serve their country: office—lucrative office, is the point to which all their exertions are carrying them.

It is astonishing to hear of the immense number with you, who expect to be provided for by the government, the labor of those *who do work*, would not be sufficient to support those, *who wish to live without it.* Brought up in idleness, they know not what to betake themselves to; labor, they will not, and to beg, they are ashamed: their whole dependence is therefore placed, in receiving provision from the government. To give them some claim to it, each of them exceeds his fellow, in his zeal for, and clamour in support of all their acts, including those which are yet to be done: they are anxiously wishing to sell their birth-rights for a mess of pottage. The more those measures have a tendency to increase the public burdens, and to impoverish the body of the people, the better they are pleased with them; because they render the more officers necessary. They enlist also under the banners of the government party, all their friends and connexions.

Multiply the whole number of officers employed in every department of the government, by fifty-six, and then add to the total amount, those who are interested in the public securities and banks; those whose mercantile interest cause them to support the present measures; those who expect to handle public money and to get jobs under the government; those, who wish to see the republican principles continued in our government, changed; and those, who are always ready to enlist themselves under the men in office—and you will readily account for the conduct of a great part of the present supporters of the late measures of the general government.

I only say "a great part," for I am convinced, that many of our best citizens support those measures, because they think that there is a necessity for doing so; although I cannot but be of opinion, that they have formed that judgment, on mistaken grounds.

You say, "you know I love Nicholas. I really am most seriously concerned for him: assure him from a friend that loves him

most sincerely, he is in danger. At any event, let him not oppose the execution of the laws. A watchful eye is kept upon him, and there are not wanting those in your country, who will readily take advantage of his indiscretions. Once more, give my warmest respects and affection to Nicholas. Entreat him to be cautious. Government will exercise all its energy. If he goes beyond certain lengths, he is lost. How could he use arguments to a most tumultuous mob, 'that they could not pay their taxes; and that because our ships were bee-hives, French hornets must be permitted to eat them up;' and not hear him answered? 'O fie! It was rude,—uncivil,—but a true emblem of Kentucky manners!' "

If we were *now* slaves, it might be improper for any one to tell his brother slaves, that they could not bear the burthens which their masters had imposed upon them. But as we are not *yet* fixed in that condition, it certainly must be right in a free man, who believes that the imposing these burthens, and the other measures which accompany them, will bring his country into a state of servitude; to warn his fellow-citizens against giving their consent to such measures. Is it not better to enquire into our ability to support a war before we enter into it, than to discover that we are not able to carry it on, after we are engaged in it? And if the expenses of *the first year* of the war, even according to the estimate made *by those* who want to force us into it, so greatly exceed our resources, that it would be impossible for us to pay the amount, if we were ever so willing to do it; is it more prudent and honourable to declare it now, or to wait until the war has been fully entered into by the other states, upon a supposition, that we can pay our proportion of the expenses which will attend its prosecution?

In a war like the present, which we have now made an offensive one, every thing of this kind ought to be taken into consideration; although it would be improper to do so, if our country was really attacked by any foreign power; because we ought *then*, to hazard every thing, rather than become subjects to any foreign nation.

I never did think, (much less say) that "because our vessels were bee-hives, that French hornets ought to be suffered to eat them up:" but I did say, and I still think, that in the present situation of America, the engaging in a maritime war, must be impolitic; more

especially against a nation having no commerce; because such a war, even if successful, could afford us no captures, which would indemnify us for any part of the expense of it; for, as they have no merchantmen at sea, even our prizes would prove to be "hornets' nests, and not bee-hives." "If the lasting preservation of the honor, liberty and independence of America, is our real object, we should carefully avoid war, during the infant state of our country. Such premature efforts, bring on a state of imbecility in the political as well as the human body; and prevent either from attaining that degree of strength which they would otherwise certainly arrive at. Twenty years more of peace, would leave America fully competent to defend all her just rights against any nation—five years' war at this time, would, probably put it out of her power to do it with effect, for one hundred years to come."

Get better information my friend, of the kind of men who composed that meeting, which you call "a most tumultuous mob;" when you do, I am certain that you will find, that *you* never saw a meeting, the members of which possessed as much understanding, wealth, and public virtue, as those men did, who attended that meeting. You will also find, that you were misinformed when you were told, that "they refused to hear me answered." The fact is, I was answered twice, by a gentleman of very considerable abilities. It is also true, that the meeting refused to hear another person, who attempted to speak to them on that side of the question; but that proceeded from personal objections to the man.

How does it happen, when the constitution declares that "the people have a right to assemble peaceably to petition for a redress of grievances;" when congress by publishing the communications from our envoys, appealed to the people as to their subject matter: when addresses have not only been received, but encouraged, from every part of America; and when the president has declared, that "there is a peculiar propriety in the people's expressing their sentiments on the present occasion;" that our meeting held for that purpose, should be denominated a mob? Does the propriety or illegality of such a meeting depend on their sentiments, so as to make it a regular, legal assembly when it applauds—but a mob, when it censures the measures of the government? If this is the law, it puts the privilege of holding "peaceable assemblies," on the same just and republican footing,

that our rulers now want to place "the freedom of the press:" that they may both be exercised to *approve*, but never to *condemn* public measures.

If our manners are not as polished as those of the more civilized people in your part of America, you should excuse it—and attribute it in part, to our want of opportunities of attending levees, visiting place-men and associating with *supple* courtiers and office-hunters. When men associate with none but their equals, they will not acquire that refinement of manners, which is generally met with about courts; but they will retain, what is a thousand times more valuable—a greater proportion of republican veracity and independence. But if, from our situation, we can give you no aid in the article of manners, that same situation will enable us to do you a more essential service. We will preserve and keep alive for you and ourselves, that sacred fire of liberty, which once blazed so brilliantly throughout America; but which appears to be now entirely extinguished in the Eastern States; which the greatest efforts are making to destroy in the middle states; and which will require all the exertions of its friends and votaries to preserve it alive in the Southern states.

Your expressions of esteem and friendship for me, gave me great pleasure, and the more so, because neither distance nor length of time, has been able to diminish in the smallest degree, the sincere respect and affection which I have long entertained for you. It is not one of the smallest complaints that I have to make against our rulers, that they have acted in such a manner, as to divide in sentiments, men equally honest, and all anxiously wishing for the liberty and happiness of their country. That political conduct cannot be right, which causes a conscientious difference of opinion between friends, brothers, father and son. But as that difference in sentiment does really exist, no man can honorably or virtuously sacrifice his opinion to that of his nearest connexion; all that remains is, that we should each of us suppose, that it is more than possible, that he errs in his opinions; and not suffer any difference in sentiment to change his esteem or affection for another, who has an equal right to think for himself, and who has honestly exercised his judgment in forming his opinion.

Although I consider your fears for me as proceeding from your friendship, and therefore thank you for suggesting them, I view

them as unnecessary; I have none such for myself. As long as my country continues free, I care not who watches me; I wish all my thoughts, words, and deeds, so far as they concern the public, to be known. He who has no political objects, but the happiness and liberty of his country, need not fear having them exposed to the eyes of the world. And if the time has come, when that liberty is to be terminated, I have lived long enough. Indeed, I have lived too long; for if that is to be the case, it would have been better that I should have died, before I became the father of eleven children; and before I had instilled into them republican principles, which must add greatly to their wretchedness, if they are now to be slaves. I can suffer nothing by my conduct in the first event; and although my sufferings may be greater for a time, in the second, they will also be of shorter duration: and if those sufferings should be one means of opening the eyes of my countrymen, so as to cause a destruction of the tyranny which inflicted them, it would be a sufficient consolation to me, even in the moment of execution and death.

The result of my thoughts on this subject is, I have lived too long as a freeman, ever to act *well* the part of a slave; my conduct has been such, as to give me no just cause to fear any thing, from law and justice; and I know not how to shape that conduct, so as to escape punishment from lawless power: I will therefore, continue to pursue that line of conduct which my conscience tells me is right; and then, happen whatever may, I shall carry with me self-approbation, and the applause of the wise and the virtuous. As I have no improper views, there is no danger of my "going beyond certain lengths;" indeed from my knowledge of myself, and from obstacles which I find in my way, I am more afraid, that my constancy failing me, I shall stop short of what my duty as a father and a citizen ought to stimulate me to; than, that I should go beyond that line of conduct, which they would make it proper for me to pursue.

When I began this letter, I intended it for your sight only; but after I had reflected, that the reasoning contained in your's, was that of the aristocratical party, drested up in your energetic language; and that the misrepresentations which had reached you, of *our* views, language and conduct, had also been made to thousands besides you: I determined to publish my answer to that reasoning, and my corrections of those unjust statements. If by doing so, I can be in any manner instrumental in removing the improper impres-

sions caused by either of them, it will make me happy; if nothing that I have said, can produce that effect, I shall still retain the pleasing consolation, which arises from the reflection, that I have done my duty.

Let the event be what it may, be assured, that I shall always continue to be,

Your affectionate friend,

GEORGE NICHOLAS.

Lexington, November 10, 1798.

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